

EVIDENTIARY HEARING  
BEFORE THE  
CALIFORNIA ENERGY RESOURCES CONSERVATION  
AND DEVELOPMENT COMMISSION

In the Matter of:

Application for a Small Power	)	Docket No.
Plant Exemption For The Modesto	)	31-SPPE-01
Irrigation District Electric	)	
Generation Station Project (MEGS)	)	
_____	)	

MODESTO IRRIGATION DISTRICT

BOARD ROOM

1231 11TH STREET

MODESTO, CALIFORNIA 95354

TUESDAY, SEPTEMBER 2, 2003

1:00 p.m.

Reported by  
James A. Ramos  
Contract No. 170-01-001

PETERS SHORTHAND REPORTING CORPORATION (916) 362-2345

COMMITTEE MEMBERS PRESENT

James D. Boyd, Commissioner and Presiding Member  
Robert Pernell, Commissioner and Associate Member

HEARING OFFICER AND ADVISORS PRESENT

Stanley Valkosky, Hearing Officer  
Michael Smith, Advisor to Commissioner Boyd  
E.V. (Al) Garcia, Advisor to Commissioner Pernell

STAFF AND CONSULTANTS PRESENT

William Westerfield, Esq., Staff Counsel  
(also serving as Public Advisor)  
James W. Reede, Jr., Project Manager

CEC STAFF AND WITNESSES

Steve Baker  
Eric Knight  
Jim Swaney, San Joaquin Valley, APCD  
William Walters

APPLICANT

Joy A. Warren, Esq., Modesto Irrigation District  
Steven Hill, Project Manager  
Susan Strachan, Strachan Consulting  
John L. Carrier, CH2MHill  
Colin McRae, PB Power, Inc.  
Steve DeYoung, DeYoung Engineering Consulting

APPLICANT WITNESSES

Thomas Priestley, CH2MHill  
Gary Rubenstein, Sierra Research  
Jerry P. Salamy, CH2MHill  
Mark Bastasch, CH2MHill  
Mike Kreamer, Modesto Irrigation District

INTERVENORS

Robert Sarvey, Community/Self

PUBLIC COMMENT

Pam Kaefer, Community/Self  
Mercedes Lopez, Community/Self

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## P R O C E E D I N G S

1:00 p.m.

COMMISSIONER BOYD: Welcome, everybody, to this first Evidentiary Hearing for the Modesto Electric Generation Station, and their Application for A Small Power Plant Exception.

Before we begin the hearing, I'm sorry for being late. We were spending money in local communities, so that has some salvation. It took us a little longer to get here from Sacramento than we'd hoped.

Before we begin I'd like to introduce the Committee and then ask all the parties to identify themselves for the record. I'm Jim Boyd, Chair of the Committee here, Presiding Member of this Committee, and I'm joined by Commissioner Robert Pernell, who is the Associate Member of the Committee.

And for some reason the Committee had no faith that he'd be here today. He didn't get a nametag, but I knew he was coming. I have a nameplate, so. Anyway, our apologies to Commissioner Pernell. That's P-e-r-n-e-l-l, in case any of you address your mail.

Also with us up here, on my left, is my

1     Advisor, Mike Smith.  On the right of Commissioner  
2     Pernell, his Advisor Al Garcia.  This is Stan  
3     Valkovsky, our Hearing Officer, who will take over  
4     for me in a few moments here.

5                 But first, let's go through the  
6     introductions.  Normally at this point we  
7     introduce our Public Advisor, who is not here to  
8     day, so pinch-hitting for the Public Advisor  
9     is --?

10                MR. WESTERFIELD:  Bill Westerfield.

11                COMMISSIONER BOYD:  Bill Westerfield,  
12     also subbing as staff counsel today.  And, I might  
13     add, Mr. Westerfield is a new father, so  
14     congratulations, Bill.  I'm glad to see you here.  
15     There was a question in our mind whether you would  
16     bother with this mundane responsibility in light  
17     of your new very important responsibility, but  
18     glad to see you here.

19                And, moving on to staff now, I'll let  
20     the staff people introduce themselves.

21                MR. WESTERFIELD:  Yes, maybe I should  
22     put on my other hat now.  I'm Bill Westerfield,  
23     counsel representing the Energy Commission staff.  
24     And to my right is Dr. James Reede, the Project  
25     Manager for this project.



1           COMMISSIONER BOYD: And that microphone  
2     you're clutching in your hand doesn't amplify for  
3     the audience, it's only for the recorder, so he  
4     got you loud and clear, but -- in this small  
5     facility I trust everybody heard that  
6     introduction, so thank you gentlemen.

7           The Applicant, if you'd like to  
8     introduce your table?

9           MS. WARREN: Yes. I'm Joy Warren,  
10    counsel for the Applicant. Next to me is Steven  
11    Hill, the Project Manager for the Applicant. And  
12    also at the table is Susan Strachan and Steve  
13    DeYoung. And we have others in the audience that  
14    you'll get to meet over the course of the day.

15          COMMISSIONER BOYD: You're all very  
16    familiar to me. It wasn't very long ago that we  
17    were together, I think. And the Intervenor of  
18    record is here at the table. Would you like to  
19    introduce yourself?

20          MR. SARVEY: Robert Sarvey.

21          COMMISSIONER BOYD: Is there anyone else  
22    who's going to testify today that we need to  
23    identify for the record? I have no indication --  
24    yes, sir?

25          MR. SWANEY: Yes, I'm Jim Swaney with

1 the San Joaquin Valley Air District.

2 COMMISSIONER BOYD: Thank you, Jim.

3 MS. WARREN: Commissioner, did you want  
4 us to take time to introduce all of our witnesses  
5 at this point?

6 COMMISSIONER BOYD: I -- probably that  
7 would be a good idea. It would take up most of  
8 the rest of the audience, so we'll know who  
9 everybody is.

10 MS. WARREN: Great. In the audience we  
11 have Mark Bastasch, we have Tom Priestley, and we  
12 have Gary Rubenstein. And Jerry Salamy in the  
13 back. Thanks, Jerry.

14 COMMISSIONER BOYD: Okay. And the rest  
15 will get their opportunity if they so choose. All  
16 right, the Committee's --

17 MR. WESTERFIELD: Commissioner Boyd?

18 COMMISSIONER BOYD: Sir.

19 MR. WESTERFIELD: We can also introduce  
20 our witnesses as well, if you'd like, on behalf of  
21 staff.

22 COMMISSIONER BOYD: That would be good,  
23 thank you.

24 MR. WESTERFIELD: All right. I'll try  
25 to get through it real quickly. We also have Eric

1 Knight here, who will testify in the topic area of  
2 Visual Resources. We have Mr. Will Walters in the  
3 area of Air Quality. Also Mr. Steve Baker will  
4 testify on Noise.

5 COMMISSIONER BOYD: Mr. Garcia, you're  
6 going to have to cut down that sound, it's too  
7 high. Is this ten decibels, or --

8 MR. GARCIA: It's called pure tone, sir.  
9 (laughter)

10 MR. WESTERFIELD: And real quickly we  
11 also have Mr. Shahab Khoshmashrab -- I've never  
12 been good at the last name.

13 MR. KHOSHMAHRAB: Khoshmashrab, if  
14 necessary.

15 MR. WESTERFIELD: Who is available to  
16 testify if necessary, in the topic area of Energy  
17 Resources.

18 COMMISSIONER BOYD: Thank you. Mr.  
19 Westerfield, is there any comments you'd like to  
20 make wearing your Public Advisor's hat, before we  
21 get under way?

22 MR. WESTERFIELD: Yes, thank you. Ms.  
23 Roberta Mendonca is not able to be here today, and  
24 she asked me to welcome members of the public, and  
25 to thank you very much for taking time out of your

1 busy schedule to participate in the evidentiary  
2 hearings.

3 To many people the CEC process is  
4 technical, and perhaps even difficult to  
5 penetrate. But I assure you it is an open  
6 process, and one in which the Energy Commission  
7 seeks and welcomes your participation. The  
8 Commission welcomes your comments.

9 Indeed, the Commissioners, the decision-  
10 makers here, are eager for your comments, your  
11 questions, and your thoughts today.

12 And there will be two opportunities for  
13 you to do that. The first opportunity will be  
14 today, during the presentation of various  
15 technical topic areas -- I believe there are about  
16 15 or so of them.

17 And there will be testimony by the  
18 parties, following which there will be the  
19 opportunity for public comment on each topic area  
20 before that topic area is closed.

21 So you may do it today during the topic  
22 areas, or there will be an evening session  
23 tonight, beginning at 6:00 p.m. I believe, where  
24 members of the public may comment, ask questions,  
25 etc. on any and all topic areas. Whatever seems

1 to come to mind, whenever you want to come up.

2 There are several ways to comment. The  
3 first is, if you would like to make a public  
4 statement or address the Committee, you can fill  
5 out, I believe it is blue cards on the table  
6 outside the board room.

7 Simply state your name and so forth, and  
8 that you wish to make a comment. And give those  
9 blue cards to me, and I will pass them on to  
10 Hearing Officer Valkosky, and he will give you the  
11 opportunity to speak.

12 If you would prefer not to address the  
13 Committee orally, you're certainly welcome to do  
14 that in writing. And so there's a separate form,  
15 piece of paper where you're given the opportunity  
16 to write out your comment. And again, please give  
17 them to me, I will pass them on to Hearing Officer  
18 Valkosky, and he will then read it.

19 And if necessary, we'll ask, perhaps a  
20 witness or someone else, to respond to it. So if  
21 you have any questions about the process please  
22 don't hesitate to approach me during one of the  
23 breaks, and I will help you in any way I can. So  
24 thank you.

25 COMMISSIONER BOYD: Thank you. As I

1 started to mention, the Committee scheduled  
2 today's events in a notice dated August 19th.  
3 And, as explained in the notice, and elaborated on  
4 by Mr. Westerfield just now, we will receive  
5 evidence by declaration for the topics that were  
6 listed in Attachment A of the notice, and we will  
7 proceed to testimony for witnesses for the topics  
8 that were listed in Attachment B of the notice.

9 The filings relevant to today's  
10 proceedings are first, the staff's Final Initial  
11 Study, dated August 22. Applicants prepared  
12 testimony, declarations and resumes for all topics  
13 dated August 27th. And the staff's Final Initial  
14 Study errata, the date of August 29th.

15 Now with that I'm going to turn the  
16 hearing over to Mr. Valkosky, the Hearing Officer,  
17 to take us through procedures, and take us into  
18 the evidentiary presentations. Mr. Valkosky.

19 HEARING OFFICER VALKOSKY: Thank you,  
20 Commissioner Boyd. Today's agenda is basically  
21 divided into two parts. First, as Commissioner  
22 Boyd indicated, we will conduct evidentiary  
23 proceedings on the topics listed on Attachments A  
24 and B. And hopefully we'll finish this by 5:00  
25 p.m. or so, and then we anticipate taking a dinner

1 break.

2 After that, we'll reconvene at 6:00  
3 specifically to hear from members of the public,  
4 as well as to complete any evidentiary  
5 presentations that we may have left unfinished.  
6 Unless there is objection, what I'd like to do  
7 today is begin by having the witnesses present  
8 their prospective testimony on project  
9 description, which will include agency comments,  
10 noticing, and so forth.

11 And after that we'll proceed with the 15  
12 topic areas we have covered by declaration.  
13 Declaration topics are listed on Attachment A. We  
14 will proceed for those topics, is that I'll  
15 introduce each topic, and entertain motions from  
16 the Applicant and then the staff to move it's  
17 respective evidence into the evidentiary record.

18 We'll see if there's any objection to  
19 that. If not, we'll receive the evidence as well  
20 as any public comment. And then close the record  
21 on that topic.

22 Following the declarations we'll then  
23 proceed with the witnesses presentations for the  
24 remaining topics on Attachment B. The oral  
25 presentations will follow a procedure set forth on

1 page two of the evidentiary hearing notice, which  
2 you've all received. Any questions on procedure?  
3 Ms. Warren, do you have questions? Mr. Sarvey?  
4 Mr. Westerfield?

5 Okay. Seeing none, Ms. Warren, if you  
6 could call your witness on project description.

7 MS. WARREN: That would be Steven Hill,  
8 the Project Manager.

9 HEARING OFFICER VALKOSKY: I'd like to  
10 have the witness sworn, please?  
11 Whereupon,

12 STEVEN HILL  
13 was called as a witness herein, and after first  
14 having been duly sworn, was examined and testified  
15 as follows:

16 MS. WARREN: Can you please state and  
17 spell your name for the record?

18 MR. HILL: Steven Hill, spelled S-t-e-v-  
19 e-n. Hill is H-i-l-l.

20 MS. WARREN: Could you please state your  
21 job title?

22 MR. HILL: I am the Project Manager for  
23 Modesto Irrigation District on the project.

24 MS. WARREN: Do you have before you a  
25 copy of the general project development testimony



1 section of exhibit 25, which is Applicant's  
2 prepared testimony? I believe that begins on page  
3 45 of the testimony.

4 MR. HILL: I have it close by.

5 MS. WARREN: Are you familiar with that  
6 testimony?

7 MR. HILL: Yes I am.

8 MS. WARREN: Was that testimony prepared  
9 by you or at your direction?

10 MR. HILL: Yes it was.

11 MS. WARREN: Does that testimony contain  
12 a statement of your qualifications?

13 MR. HILL: Yes it does.

14 MS. WARREN: Could you please provide a  
15 brief overview of your education and experience as  
16 it pertains to the subject matter?

17 MR. HILL: I hold a Bachelor's of  
18 Science in Electrical Engineering, as well as a  
19 Master of Science in Engineering. I'm a  
20 registered Professional Engineer in the state of  
21 California, and have 20-plus years of experience  
22 in design engineering, project management, and  
23 construction management.

24 MS. WARREN: Do you have any additions,  
25 corrections, or clarifications to your final

1 testimony?

2 MR. HILL: No I do not.

3 MS. WARREN: Your testimony incorporates  
4 by reference a number of exhibits. Can you please  
5 go through and identify those exhibits?

6 MR. HILL: Yes I can. Exhibit 1, which  
7 incorporates Sections 1, 2, 3, 4, 5, 7, and 9 of  
8 the SPPE. And Appendices 1A, 1B, and 1C of said  
9 SPPE. Exhibit 2 is Supplement A to the SPPE,  
10 which is the supplement on zero liquid discharge.  
11 Exhibit 3 is a revised figure for Supplement A.  
12 Exhibit 15 is the draft initial study comments,  
13 set 1. And -- I'm sorry, exhibit 27, which is  
14 informal data response set 6.

15 MS. WARREN: Thank you. To the best of  
16 your knowledge, are all the facts contained in  
17 your testimony, including all the reference  
18 documents, true and correct?

19 MR. HILL: Yes.

20 MS. WARREN: Do the opinions contained  
21 in your testimony represent your best professional  
22 judgment?

23 MR. HILL: Yes.

24 MS. WARREN: And do you adopt such  
25 testimony as your own in this proceeding?

1 MR. HILL: Yes.

2 MS. WARREN: Can you please give us a  
3 summary of your testimony on the project  
4 description?

5 MR. HILL: Yes I can. Let me start by  
6 saying the Modesto Irrigation District is a public  
7 utility. It's governed by a board of five  
8 directors, and as a part of their responsibilities  
9 they manage the district affairs, and are the only  
10 ones who can commit the district to anything.

11 And with that, I might mention -- I  
12 believe it was July 9th of 2002 -- a board  
13 resolution was approved, basically granting us the  
14 authority to go build a 100 megawatt simple cycle  
15 combustion turbine power plant.

16 There were a number of alternatives that  
17 were presented to the board at that time. Prior  
18 to that meeting, a study had been commissioned by  
19 the district. We enlisted Black and Veatch to go  
20 out and look at alternative technologies, as well  
21 as alternative sites.

22 And we started with a 50-mile radius  
23 around the city of Modesto, identified 27 sites,  
24 and that was pared down to a smaller quantity. It  
25 went to about 16, and then further down to 12, and

1 then reduced further down to three, at which the  
2 site at Ripon was chose to be the preferred site.

3 The design currently plans on using two  
4 LM 6000 air derivative sprint-type units. They're  
5 configured in what's referred to as the Norway  
6 package. Slightly different, but very similar to  
7 the LM 6000 we use at our Woodland two generating  
8 facility that was just brought online.

9 These combustion turbine generator  
10 packages are equipped with selective catalytic  
11 reduction units for the control of carbon  
12 monoxide, as well as oxides of nitrogen and oxides  
13 of sulfur, as well as some other air pollutants,  
14 but those are the primary ones.

15 And the application was filed with the  
16 Energy Commission on April 21st of this year. On  
17 June 20th of this year a Supplement A was filed  
18 that essentially included a description of a zero  
19 liquid discharge system.

20 After the application was filed, and in  
21 conversations with staff and the regional water  
22 quality board, it was determined that our best  
23 choice was not to discharge to the city of Ripon  
24 sanitary plant, and so we elected to go zero  
25 liquid discharge at that time and filed that

1 Supplement.

2           So the plant will contain a water  
3 treatment plant, which will include a zero liquid  
4 discharge system. The project also contains about  
5 a quarter of a mile of transmission line. It will  
6 replace an existing line that goes down the tract  
7 bell (sp?) easement.

8           There is a 17 KV line that runs from  
9 essentially across the street from where our  
10 proposed site will be to our Stockton substation.  
11 That transmission line will be replaced with a  
12 double circuit 69 KV transmission line. The poles  
13 will be about 20 feet taller than the existing  
14 poles, and we may have to add one more. And so it  
15 will tie to our existing Stockton substation  
16 located about a quarter of a mile away.

17           The project will also consist of an  
18 approximately quarter mile gas transmission line  
19 that will run down South Stockton Avenue. We will  
20 intersect the existing PG&E transmission gas line,  
21 about 4th Avenue and South Stockton Boulevard.  
22 And it will run to the plant.

23           We will also be providing gas  
24 compressors to step up the pressure to that line  
25 to about 700 psi for the turbines to run on.

1 I think that probably at this time is a  
2 good summary of the project. I'll leave it at  
3 that.

4 MS. WARREN: The witness would then be  
5 available, if there are any questions?

6 HEARING OFFICER VALKOSKY: Mr. Hill, why  
7 did you choose to build this in simple cycle  
8 rather than combined cycle configuration?

9 MR. HILL: The Modesto Irrigation  
10 district primarily has a peaking need. Our load  
11 doubles in the summertime, and primarily for that  
12 reason. I will mention, Mr. Valkosky, that the  
13 board of directors did ask us to lay out the plant  
14 so that it could conceivably be combined cycle at  
15 a later time if that need changes.

16 HEARING OFFICER VALKOSKY: So then is it  
17 fair to say that the operational profile will be  
18 as a peaker primarily or exclusively?

19 MR. HILL: Primarily.

20 HEARING OFFICER VALKOSKY: Okay. What  
21 portion of the year would it be running at base  
22 load?

23 MR. HILL: Well, let me clarify if I  
24 might. When I say primarily, normally peaker  
25 plants run just a few hours a year, normally under

1 3,000 hours a year.

2 MID's load is not, we will not need to  
3 run more than that to serve our load, but if the  
4 state needs energy and we can provide it, and if  
5 we are called upon to provide it, we will be in a  
6 position to do so. And so, under those  
7 circumstances, it could run more so than just as a  
8 peaker to serve our own use.

9 HEARING OFFICER VALKOSKY: What would be  
10 the outside maximum that it could run, the normal  
11 8760 in a year?

12 MR. HILL: We are planning on permitting  
13 with the air board for 8760.

14 HEARING OFFICER VALKOSKY: Okay. Will  
15 any pile driving occur during project  
16 construction?

17 MR. HILL: It is not anticipated that  
18 there will be any pile driving.

19 HEARING OFFICER VALKOSKY: Okay, thank  
20 you. Mr. Westerfield, any cross-examination?

21 MR. WESTERFIELD: No questions, Mr.  
22 Valkosky.

23 HEARING OFFICER VALKOSKY: Questions,  
24 Mr. Sarvey?

25 MR. SARVEY: I just have one question.

1     Why did the project not use the recycled water  
2     that was adjacent to the project?

3             MR. HILL:   The city of Ripon has three  
4     primary water sources.   They have potable water,  
5     they have a non-potable well water, as well as the  
6     gray water I think that you're referring to.   And  
7     it was definitely an option, but it's much more  
8     economical to use the non-potable water than the  
9     gray water.

10            And as I indicated, we are governed by a  
11   board of directors who's primary responsibility is  
12   to ensure the lowest rates to our customers, and  
13   so it was a matter of economics.

14            MR. SARVEY:   So it was basically an  
15   economic decision?

16            MR. HILL:   That's correct.

17            MR. SARVEY:   Thank you.   That's all.

18            MR. GARCIA:   Mr. Hill, I would like to  
19   go back to Hearing Officer Valkosky's design of  
20   the plant, and your last statement that your board  
21   is very interested that you ensure that you keep  
22   the rates to consumers down.   And my understanding  
23   that there is a significant efficiency difference  
24   between combined cycle and a plain old GT cycle.

25            Could you tell us percent-wise or some



1 other basis what that difference would be?

2 MR. HILL: The efficiency on this simple  
3 cycle plant, using this particular type of  
4 combustion turbines, is approximately 38 to 39  
5 percent efficient. The combined cycle plant is  
6 probably roughly 50 to 52 percent efficient, to  
7 the best of my knowledge.

8 MR. GARCIA: Could you translate that in  
9 terms of heat rate?

10 MR. HILL: I think I would be guessing.  
11 I think on the simple cycle we're right around  
12 8,000, and I don't wish to give a number on the  
13 combined cycle at this time.

14 MR. GARCIA: But it sounds to me like  
15 there's quite a bit of difference in efficiency  
16 between one mode and the other?

17 MR. HILL: Well, 52 subtract 39 is about  
18 12, 13 percent. However, there are definitely  
19 tradeoffs. In a peaking plant you want to start  
20 that up quickly, and with a plant like this you  
21 can start it up as quickly as ten minutes to 20  
22 minutes.

23 With a combined cycle it takes longer.  
24 So just like when you're sitting on the airplane  
25 runway, and you want to take off, you can ramp

1     that jet engine pretty quick to take off and  
2     that's the goal here with the peaking plant.  You  
3     want to start quickly.  That's the tradeoff you  
4     make for efficiency.

5             MR. GARCIA:  And of course there is a  
6     point at which economics dictate the choice of the  
7     design of the plant.  Would it not where the  
8     increased efficiency, certainly, would offset the  
9     incremental cost of constructing the more complex  
10    plant?

11            MR. HILL:  Certainly this, the cost of  
12    this plant we're estimating to be somewhere around  
13    \$79 million.  If we were to combine cycle this  
14    plant with a, what I'll use, a 211 configuration,  
15    it would probably be about \$120 to \$130 million.

16            MR. GARCIA:  Has MIB done an analysis to  
17    try and determine what is the break point in terms  
18    of operating hours, at which point it would be  
19    more cost-effective to do an installation with a  
20    HERSIG?

21            MR. HILL:  Mr. Garcia, as I said, right  
22    now our primary need is we have a peaking need.  
23    And we have done some preliminary analysis.  But  
24    for the foreseeable future we have a peaking need.  
25    And so I'll leave it at that if I can.

1           MR. GARCIA: I may have some other  
2 questions later.

3           HEARING OFFICER VALKOSKY: Ms. Warren,  
4 would you like to move your witness's testimony  
5 and exhibits?

6           MS. WARREN: If I may, I have just one  
7 further question, just to clarify the testimony.

8           HEARING OFFICER VALKOSKY: Certainly.

9           MS. WARREN: You discussed the issue of  
10 gray water and referenced the economics of the  
11 district's decision. Were there any other factors  
12 that went into your decision on your water source  
13 to use?

14          MR. HILL: Well, again that gray water  
15 does not meet Title 22 conditions. And in order  
16 to achieve that it's fairly extensive and  
17 expensive water treatment plant to do that.

18          MS. WARREN: At that, we would like to  
19 move Mr. Hill's testimony into evidence.

20          HEARING OFFICER VALKOSKY: Okay. I take  
21 it you would like to move the relevant portions of  
22 exhibits 1, 2, 3, 15, 25, and 27?

23          MS. WARREN: Yes, exactly. I wasn't  
24 quite sure whether you wanted to do this piecemeal  
25 or do it all at once?

1 HEARING OFFICER VALKOSKY: Understood.  
2 My practice is typically to do it piecemeal, so  
3 the record focuses on what we're talking about in  
4 a given topic.

5 MS. WARREN: Okay. Thank you.

6 HEARING OFFICER VALKOSKY: Is there  
7 objection to receive?

8 MR. WESTERFIELD: No objection.

9 HEARING OFFICER VALKOSKY: Okay, the  
10 portions of those exhibits are admitted. Mr.  
11 Westerfield?

12 MR. WESTERFIELD: I'd like to call Dr.  
13 James Reede on the subject of Project Description.  
14 Dr. Reede, could you please be sworn in?  
15 Whereupon,

16 JAMES REEDE  
17 was called as a witness herein, and after first  
18 having been duly sworn, was examined and testified  
19 as follows:

20 MR. WESTERFIELD: All right. Dr. Reede,  
21 are you familiar with the portion of staff's final  
22 initial study entitled Project Description?

23 MR. REEDE: Yes I am. I am the author  
24 of that section.

25 MR. WESTERFIELD: And is that still your

1 testimony today?

2 MR. REEDE: Yes.

3 MR. WESTERFIELD: Could you please tell  
4 the Committee briefly your background and  
5 qualifications to offer that testimony?

6 MR. REEDE: I have a Doctorate of  
7 Education in Organizational Leadership and Public  
8 Management. I have a Masters Degree in Public  
9 Policy and Administration. And I have a Bachelor  
10 of Science degree in Organizational Behavior and  
11 Industrial Management.

12 I have 30 years in the electrical  
13 industry, including work in both nuclear, wind  
14 farms, hydroelectric generation, and combustion  
15 turbines.

16 MR. WESTERFIELD: Okay, thank you very  
17 much. And could you summarize your testimony in  
18 this topic area please?

19 MR. REEDE: Yes I can. In this  
20 particular topic area staff independently reviewed  
21 the application for power plant exemption, under  
22 Article five of Siting Regulations, and determined  
23 that, for the most part, the information provided  
24 by the Applicant was accurate in regards to the  
25 proposed power plant equipment, its water supply

1 and use, the project site and location, the  
2 transmission configuration, the quantities of  
3 natural gas and the balance of plan equipment  
4 necessary for that, the emission controls, and the  
5 construction schedule and proposed work force.

6 We consequently performed a review of  
7 all the areas related to the power plant, and  
8 immediately after the issuance of the final  
9 initial study, questions were raised by the  
10 Committee related to noise and energy resources,  
11 which resulted in staff issuing an errata on  
12 August the 29th that addressed energy resources,  
13 noise, and some typographical errors.

14 MR. WESTERFIELD: Okay, thank you very  
15 much. Insofar as your testimony of project  
16 description, is it still your testimony today?

17 MR. REEDE: Yes, it's still my testimony  
18 today.

19 MR. WESTERFIELD: That's all the  
20 questions I have.

21 HEARING OFFICER VALKOSKY: Thank you.  
22 Any questions for the witness?

23 COMMISSIONER BOYD: No questions.

24 HEARING OFFICER VALKOSKY: Has the --  
25 the staff attorney can answer this too, but has

1 the Commission's SPPE process been certified by  
2 resources as being exempt from the negative  
3 declaration process or being the functional  
4 equivalent of a negative declaration process.

5 MR. WESTERFIELD: You know, Mr.  
6 Valkosky, I can't hear you actually. Could you  
7 repeat that?

8 HEARING OFFICER VALKOSKY: I'm sorry,  
9 Mr. Westerfield. It's covered in your testimony,  
10 but has the SPPE process at the Commission, that  
11 we are engaged in now, been certified by the  
12 Secretary of Resources as being the functional  
13 equivalent of the negative declaration process?  
14 Or has it not been certified as being anything  
15 especially?

16 MR. WESTERFIELD: I believe that's in  
17 the project description testimony.

18 HEARING OFFICER VALKOSKY: As I say, you  
19 can answer because it is a legal question. Or Dr.  
20 Reede can answer.

21 MR. WESTERFIELD: You can answer that,  
22 Dr. Reede.

23 MR. REEDE: In the testimony that was  
24 propounded by staff attorney, that specific  
25 question was addressed, in that the Energy

1 Commission can issue a negative declaration in  
2 this particular case.

3 HEARING OFFICER VALKOSKY: Okay. And my  
4 question is more of a procedural one. Would we be  
5 using the regular CEQA procedures, or does the  
6 Energy Commission have special procedures?

7 MR. WESTERFIELD: I believe we're going  
8 to use the regular CEQA procedures, though of  
9 course there are special power plant exemption  
10 procedures according to Energy Commission  
11 regulations. There are a limited number of  
12 regulations that deal with that.

13 HEARING OFFICER VALKOSKY: Right. But  
14 we would be using the typical negative declaration  
15 procedures for noticing, is that correct?

16 MR. WESTERFIELD: Yes we would.  
17 Although there are several noticing procedures.  
18 There are some CEQA noticing procedures, and then  
19 as I'm sure you are aware, there are also noticing  
20 procedures under Energy Commission regulations.

21 HEARING OFFICER VALKOSKY: Okay. Could  
22 you take us through the applicable ones?

23 MR. WESTERFIELD: Sure. As far as the  
24 Energy Commission's regulations go, there is a  
25 requirement under Title 20, Section 1945 for,



1 after hearings conducted such as this, that the  
2 Committee shall prepare a proposed decision on the  
3 application for exemption.

4 And that that proposed decision is  
5 distributed to the public, the public advisor, the  
6 Applicant, etc., within 21 days after publication  
7 of the proposed decision. Then a hearing is held  
8 by the full Commission, at which time the  
9 Commission can adopt, amend, the proposed  
10 decision.

11 So that is part and parcel of the Energy  
12 Commission regulations. There are CEQA  
13 regulations that apply that would, we believe,  
14 require the Energy Commission to publish and  
15 circulate a draft negative declaration, it's  
16 initial study, to the state clearinghouse. So we  
17 also believe that would apply.

18 There is, I guess, an order in which we  
19 would recommend that that be done. And as I see  
20 it, there are several different options to do  
21 that. First off, following this hearing, there  
22 will be a number of days for briefs potentially,  
23 and etc.

24 And then at some point after the briefs  
25 are in and the Committee has a chance to assess

1     how it will decide, the Committee has the option  
2     to issue a proposed negative declaration, and send  
3     that negative declaration to the state  
4     clearinghouse, for distribution to state agencies.

5             We believe this, under the CEQA  
6     regulations, this is a requirement that the Energy  
7     Commission must follow. And that is to send a  
8     negative declaration to the state clearinghouse.

9             Part of that negative declaration must  
10    include the staff's initial study, a proposed  
11    finding by the Committee of no significant impact,  
12    and mitigation measures that the Committee would  
13    assign to the project to ensure that it has no  
14    significant impact on the environment.

15            At the same time the Committee could  
16    then issue a Notice of Intent to adopt a mitigated  
17    declaration under 15072 of the CEQA regulations.  
18    And then this notice should include the date, time  
19    and place of any hearings proposed on the negative  
20    declarations, as required by Public Resources Code  
21    21092.

22            Now at least ten days thereafter, this  
23    is again an option that I believe the Committee  
24    has -- at least ten days thereafter the Committee  
25    could issue their proposed decision, commonly

1 referred to as the PMPD, and distribute that  
2 according to the Section 1945 regulations.

3 Then, no later than 20 days after  
4 publication or issuance of the PMPD, and at least  
5 30 days after the notice and clearinghouse  
6 submittal, the full Commission could hold their  
7 Section 1945 hearing on the PMPD, at which time  
8 the full Commission may adopt it as its final  
9 decision.

10 HEARING OFFICER VALKOSKY: Okay, so what  
11 you're saying is that the state clearinghouse  
12 review period would be 30 days?

13 MR. WESTERFIELD: Yes it would.

14 HEARING OFFICER VALKOSKY: Okay.

15 MR. WESTERFIELD: And this is one of a  
16 number of options the Committee has as far as  
17 timing, to meet both the notice requirements under  
18 our own regulations, the CEC, and the CEQA  
19 noticing requirements for public comment.

20 This is one option. I can think of at  
21 least two other options that are available to the  
22 committee that I can walk through if you like.

23 HEARING OFFICER VALKOSKY: Yes, please  
24 do.

25 MR. WESTERFIELD: Okay. Option number

1 two would be that the Committee can issue its  
2 PMPD, it's Proposed Decision, and a Notice of  
3 Intent to adopt a mitigated negative declaration,  
4 which would include, again, the final initial  
5 study.

6 All of these circulated according to CEC  
7 regulation 1945A, and CEQA guidelines 15205, again  
8 going through the state clearinghouse.

9 No later than 21 days thereafter, the  
10 full Commission holds its Section 1945B hearing,  
11 and receives final argument, and no less than nine  
12 days thereafter, and after close of the 30-day  
13 state and public comment periods, the full  
14 Commission may adopt the Proposed Decision.

15 So in this fashion one option that the  
16 Commission has is to essentially hold its final  
17 argument and its public hearing within the 30 day  
18 period of public and state comment. And then,  
19 following 30 days comment period then it could, I  
20 don't know, meet again, or convene somehow, and  
21 adopt its final decision. So that would be option  
22 number two.

23 HEARING OFFICER VALKOSKY: Okay, and  
24 again, in our parlance, that would be the two  
25 business meeting option, is that correct?

1 MR. WESTERFIELD: Yes, that would be a  
2 two business, yes.

3 HEARING OFFICER VALKOSKY: Okay. Thank  
4 you. Third one?

5 MR. WESTERFIELD: The third option would  
6 be that the Committee, here, could issue a draft  
7 for preliminary PMPD, or a preliminary negative  
8 declaration, along with the Notice of Intent to  
9 adopt a negative declaration, all circulated  
10 according to CEQA guideline 15205.

11 So, in other words, it would be a  
12 preliminary proposed decision, or a draft proposed  
13 decision. After running of 30 days of state  
14 public comment, the Committee would issue it's  
15 proposed decision, which would contain the  
16 negative declaration and the final initial study.

17 They would then be circulated according  
18 to CEC Rule 1945A. Then, no later than 21 days  
19 thereafter, according to Regulation 1945B, there  
20 would be a hearing before the full Commission, and  
21 at that point the full Commission may adopt the  
22 PMPD.

23 I think that option speaks in terms of a  
24 little more sequentially running the two periods,  
25 and probably would take a bit longer to complete

1     than either the first or the second option.

2             HEARING OFFICER VALKOSKY:   So that,  
3     could we refer to that as the 51 day option?

4             MR. WESTERFIELD:   That could be the 51  
5     day option.

6             HEARING OFFICER VALKOSKY:   And the first  
7     one would be the 30 day option?

8             MR. WESTERFIELD:   I think, yes, the  
9     first one could be a 30 day option.

10            HEARING OFFICER VALKOSKY:   Okay, I'm  
11    done, I'm sorry I interrupted you, Mr.  
12    Westerfield, please continue.

13            MR. WESTERFIELD:   So I think there is  
14    great flexibility that the Committee has into how  
15    it tries to meet both obligations.   The point is  
16    to try and provide a good opportunity for public  
17    comment and to meet CEQA mandate, if you will,  
18    that the proposed negative declaration be  
19    circulated along with the initial study to state  
20    agencies for comment.

21            I think that, of the three options,  
22    certainly the most expeditious one would be option  
23    number one, and I think that would fully satisfy  
24    the intent of the requirement of both sets of  
25    regulations.

1           HEARING OFFICER VALKOSKY: Okay. Thank  
2     you. Mr. Reede, could you explain for the  
3     Committee's benefit how our compliance unit  
4     monitors or ensures compliance with a condition of  
5     exemption?

6           MR. REEDE: Yes, Hearing Officer  
7     Valkosky. General conditions of exemption were  
8     included in the final initial study, as were  
9     specific conditions of exemption for certain  
10    disciplines.

11           In the general conditions of exemption  
12    the Applicant will be required to report on a  
13    regular basis during the construction period, and  
14    then during an ongoing period for certain areas,  
15    the status of various construction activities,  
16    whether or not, for example, there have been  
17    cultural resource finds, paleontological resource  
18    finds.

19           There will also be monitors required to  
20    be onsite at all times, to be basically the eyes  
21    and ears of a compliance project manager from the  
22    Energy Commission. There are some annual reports  
23    that are required, in which the Applicant will  
24    also be reporting the state of the power plant, so  
25    to speak.

1           HEARING OFFICER VALKOSKY: Does the  
2 Commission have the same enforcement authority in  
3 terms of, for example, issuing a stop work order,  
4 or levying a fine, as it would if this were an  
5 Application for Certification?

6           MR. REEDE: Only in the specific areas  
7 in which the Commission has retained jurisdiction.  
8 And I say has retained jurisdiction, such as in  
9 the Air Quality area. The city of Ripon will have  
10 the primary responsibility for the permitting and  
11 construction of the power plant, and they will  
12 have their inspectors there available.

13           However, in certain areas, we have  
14 retained jurisdiction.

15           HEARING OFFICER VALKOSKY: Right. And I  
16 assume that those are the topic areas for which  
17 you are proposing conditions of exemption, is that  
18 a correct assumption?

19           MR. REEDE: Yes.

20           HEARING OFFICER VALKOSKY: Okay, thank  
21 you.

22           COMMISSIONER PERNELL: Mr. Reede, you  
23 said that the -- can you hear me?

24           MR. REEDE: Yes.

25           COMMISSIONER PERNELL: You said that the



1 project will be monitored continuously throughout  
2 the construction?

3 MR. REEDE: Yes. By the city of Ripon's  
4 inspectors, and by our inspectors, or cultural  
5 resource specialist, or paleontological resource  
6 specialists.

7 COMMISSIONER PERNELL: Okay, so I guess  
8 my question was you're talking about physical  
9 monitoring, or some type of known air quality  
10 monitor being set up onsite?

11 MR. REEDE: Yes. There will be people  
12 on site. In the example of air quality, they are  
13 required to -- well, they, I mean the Applicant --  
14 is required to have -- and I can give you the  
15 specific term -- a air quality construction  
16 mitigation manager, as an example of it.

17 And that individual shall be responsible  
18 for maintaining compliance with the conditions,  
19 the air quality conditions, for the entire project  
20 site and many air facility constructions.

21 COMMISSIONER PERNELL: All right, so  
22 that's a physical person being onsite versus a  
23 monitoring device set up somewhere on the site?

24 MR. REEDE: Right. There's a warm body  
25 there, sir.

1 COMMISSIONER PERNELL: Thank you. No  
2 further questions.

3 MR. WESTERFIELD: If I may address the  
4 Committee a little bit, to add to this.

5 HEARING OFFICER VALKOSKY: Certainly,  
6 Mr. Westerfield.

7 MR. WESTERFIELD: And maybe I can  
8 address this a little bit conceptually. Mr.  
9 Valkosky, you asked to really distinguish this  
10 from a more conventional licensing process. And  
11 as we all know it's essentially an exemption  
12 question before the Committee, to decide whether  
13 to exempt this plant from our licensing process.

14 And should the Committee and the  
15 Commission decide to do that, fundamentally this  
16 project will be regulated by other public  
17 agencies, other public authorities, and not by the  
18 Energy Commission. And in that fashion I believe  
19 it is distinguishable from the typical power plant  
20 license or certification that the Commission  
21 issues.

22 It is to be essentially turned over to  
23 other agencies that have appropriate  
24 responsibility, such as the air district, such as  
25 the city of Ripon. They will shoulder the main

1     burden.

2                 There are, as Dr. Reede mentioned, a few  
3     conditions of exemption that staff recommended,  
4     that should attach to the project that we believe  
5     are necessary to ensure that there is no  
6     significant impact on the environment of the  
7     project as proposed, or the project as governed by  
8     applicable laws, does not have a significant  
9     impact on the environment.

10                We view those, if you will, as sort of  
11    amendments to the project, changes to the project  
12    at an initial stage, so that after they are  
13    applied, then the project as mitigated, will no  
14    longer have a significant impact on the  
15    environment.

16                To the extent that we might recommend  
17    that the Commission retain jurisdiction, typically  
18    that is just during the construction phase. There  
19    are some conditions of exemption that apply during  
20    the construction phase, and Dr. Reade had  
21    mentioned paleontological, cultural.

22                And so for example, during construction  
23    or groundbreaking, or digging, if you will, there  
24    is a concern that various sculpture resources  
25    might be encountered, various archaeological

1 remains might be encountered. And so we want to  
2 make sure that this is conducted in the fashion to  
3 prevent these remains from being disturbed, and  
4 thus significant impact.

5 But that's fundamentally during the  
6 construction phase. Once the project is  
7 constructed, for the most part, it's one in which  
8 we see that the Commission no longer regulates,  
9 and it is turned over to other authorities.

10 HEARING OFFICER VALKOSKY: So in other  
11 words, for an area -- and again, I don't mean to  
12 imply that these areas necessarily have  
13 conditions, but for example noise, where there  
14 could be continuing complaints. That would be  
15 handled by whom?

16 MR. WESTERFIELD: That would be handled  
17 by the city of Ripon.

18 HEARING OFFICER VALKOSKY: Okay. How  
19 about for air quality, where you would certainly  
20 have some operational monitoring. Is that  
21 primarily handled by the district then?

22 MR. WESTERFIELD: Again, insofar as  
23 potential air quality impacts during the  
24 construction of the project, we have proposed  
25 certain conditions of exemption that we would

1 monitor to see that they are followed.

2 And so, in a sense we're asking to  
3 retain jurisdiction during that portion, but for  
4 the operation of the project, the life of the  
5 project, 20-30 years, I think we see the air  
6 district as being the appropriate regional public  
7 agency to regulate compliance.

8 HEARING OFFICER VALKOSKY: Okay. So  
9 based on that, if staff -- again, this is a  
10 hypothetical example -- would recommend more  
11 stringent operational mitigation than would  
12 perhaps the district, I mean, we have a conflict.

13 I mean, you know, you have an  
14 assumption, I think, that staff's mitigation would  
15 then apply, although in actuality what I'm hearing  
16 is that we have the operational enforcement  
17 jurisdiction, so that the district --

18 MR. WESTERFIELD: We certainly don't say  
19 that there would be a conflict between anything  
20 we'd recommend and something that the Applicant  
21 would --

22 HEARING OFFICER VALKOSKY: I'm speaking  
23 hypothetically.

24 MR. WESTERFIELD: Hypothetically, of  
25 course. But if, for example, mitigation

1 recommended by staff were to go beyond what the  
2 district might recommend, we would then recommend  
3 that that additional mitigation be a part of the  
4 project, if you will, and that would be a part of  
5 the project that the Applicant would agree to  
6 abide by.

7 And at that point in time, going  
8 forward, I suppose it would be -- i can't say it  
9 would be our jurisdiction to continue to monitor  
10 that.

11 HEARING OFFICER VALKOSKY: I'm sorry,  
12 you can't say that it would or would not be?

13 MR. WESTERFIELD: It would not be the  
14 Energy Commission's jurisdiction to monitor that.  
15 But I have to say I can't think of that example  
16 right now, from my recommendations in the final  
17 initial study, so perhaps when we reach that  
18 discipline or any discipline where it seems like  
19 there might be some measure that is not part of  
20 the jurisdiction of another body, perhaps we can  
21 address that at the time.

22 But I can't think of an example that  
23 fills your hypothetical in this case.

24 HEARING OFFICER VALKOSKY: Okay, and  
25 again, since it was a hypothetical, I'll let it

1 rest. Ms. Warren, first do you have any cross-  
2 examination of Dr. Reed, please conduct that.  
3 Second, if you'd like to give your opinion on any  
4 of the matters that Mr. Westerfield has covered  
5 concerning noticing, compliance, things like that,  
6 please feel free.

7 MS. WARREN: Thank you. I don't have  
8 any questions for Dr. Reede. You had asked us to  
9 include our perspectives on the process issue as  
10 part of Mr. Hill's testimony, and we did that.

11 But, commenting on Mr. Westerfield's  
12 statement, again, we don't necessarily agree that  
13 all the CEQA procedural regulations towards  
14 adopting a negative dec would apply.

15 However, we don't disagree then with the  
16 analysis that Mr. Westerfield made of how those  
17 CEQA regulations could be complied with in the  
18 event it was determined that they should be.  
19 Applicant, of course, would promote shorter time  
20 period as opposed to the longer time period  
21 options.

22 I think we'd also reference the ability  
23 to request the state clearinghouse shorten the 30  
24 day period. We have some circumstances that we  
25 pointed out in the testimony. In this case, that

1 the final initial study had been made available to  
2 the public, comments had been solicited, and have  
3 been addressed in the final initial study, so many  
4 of the purposes -- in fact I would support that  
5 the purposes of the state clearinghouse  
6 circulation have been met.

7 The state agencies have had the  
8 opportunity to review the project and the  
9 analysis, and so that, again, if the state  
10 clearinghouse processes were to be followed in  
11 this case I would suggest that it would be  
12 appropriate to use a shorter period and even to  
13 request that state clearinghouse adhere to the 21  
14 day period provided for in the Commission  
15 regulations.

16 HEARING OFFICER VALKOSKY: Okay, so  
17 basically, a little bit abbreviated version of Mr.  
18 Westerfield's first option.

19 MS. WARREN: Right.

20 HEARING OFFICER VALKOSKY: Do you have  
21 any comments on the compliance matters that we  
22 were discussing with staff?

23 MS. WARREN: At this time we don't.  
24 We'd like to reserve, obviously, the right to  
25 review the transcript on the conclusions and



1 testimony, and if need be we can put additional  
2 information into the briefing.

3 HEARING OFFICER VALKOSKY: Certainly,  
4 thank you. Mr. Sarvey, any questions for Dr.  
5 Reede?

6 MR. SARVEY: Yes. I have a couple  
7 questions. And it's related to some of the things  
8 that Ms. Warren just said, and seem to indicate  
9 that all CEQA regulations would not be imposed on  
10 this project, is that correct?

11 MR. REEDE: I'm not going to represent  
12 what you believe Ms. Warren said.

13 MR. SARVEY: I know, but I'm -- am I  
14 correct in making that assumption that we won't be  
15 applying CEQA to all aspects of this project?

16 MR. REEDE: As far as I'm concerned, you  
17 are not correct in making that assumption.

18 MR. SARVEY: Thank you. That troubled  
19 me some, and I'm glad you cleared it up. Now the  
20 other area that troubles me is my understanding is  
21 there will be no CEC compliance manager on this  
22 project?

23 MR. REEDE: There is a CEC compliance  
24 manager on this project, her name is Ms. Ila  
25 Lewis. And she is the responsible person at the

1 California Energy Commission for this project.  
2 Once a decision is made to approve the exemption  
3 she would then take over. No decision has been  
4 made, one has been assigned, though.

5 MR. SARVEY: But there won't be a  
6 traditional compliance manager in terms of, if you  
7 have a problem with the project, instead of going  
8 to the local authorities you go to the CEC, let's  
9 say in terms of noise or air emissions or some  
10 sort of malfunction in the pollution control  
11 systems or something, that's not something that  
12 the CEC has a compliance manager to address those  
13 situations?

14 MR. REEDE: The city of Ripon will be  
15 issuing the permit for construction of this power  
16 plant and they are responsible for, say, noise  
17 complaints. We have given them a copy of our  
18 noise complaint form, and how we process it. They  
19 are gearing up to handle the noise complaints.

20 As far as the air pollution control  
21 equipment, it will be on the air district. During  
22 construction our compliance project manager has  
23 full authority. After it's licensed the air  
24 district will be in charge.

25 MR. SARVEY: Thank you.

1 HEARING OFFICER VALKOSKY: Is that it,  
2 Mr. Sarvey?

3 MR. SARVEY: That's it, thank you.

4 HEARING OFFICER VALKOSKY: Any redirect,  
5 Mr. Westerfield?

6 MR. WESTERFIELD: Yes -- I don't know if  
7 this is redirect or not. I do want to make one  
8 statement to sort of add to that, James. Again,  
9 fundamentally, this is an exemption of our  
10 certification process.

11 So once the project as proposed, and as  
12 the mitigation that we've proposed is part of the  
13 project, then it is sort of fundamentally no  
14 longer a CEC regulated project. Now there are  
15 some areas, such as in air quality in reference to  
16 construction emissions, and for cultural and that  
17 sort of thing, where we are retaining some  
18 jurisdiction, if you will, to make sure someone is  
19 out there to watch over it during construction.

20 But at the same time, during  
21 construction, the city of Ripon will also be  
22 regulating many other aspects of the plant, the  
23 construction of the plant. So we, if you will,  
24 are recommending that the Commission only have a  
25 small piece of looking over the construction, and

1     that the city and other agencies have the lion's  
2     share of the responsibility even then.

3             MR. REEDE: I might also add, Hearing  
4     Officer Valkosky, for Mr. Sarvey's benefit, that  
5     in the area of hydrology and water quality, and  
6     also in the area of biological resources, we have  
7     to retain limited jurisdiction because of  
8     legislative reporting requirements, such as how  
9     much water they're using every year.

10            We have to file a report with the state  
11    Legislature as to how much water all the power  
12    plants are using in the state. So we have to  
13    retain limited jurisdiction.

14            The other area, biological resources,  
15    wherever there's mitigation that takes up acreage,  
16    so to speak, for biological impacts, we also have  
17    to report that to the state Legislature. So we  
18    have to retain limited jurisdiction, so that in  
19    the annual report that they submit to us, they  
20    tell us how much land had to be used for  
21    mitigation purposes in the San Joaquin multi-  
22    species conservation plan, for example.

23            In the area of cultural resources, we  
24    felt comfortable that, in their project  
25    description they said they were going to get a

1 cultural resource specialist. We enhanced their  
2 project proposal to ensure that there would be no  
3 significant impacts to archaeological resources or  
4 cultural resources.

5 So we had to include conditions of  
6 exemption that builds upon what they have proposed  
7 in the project, to ensure that there was a less  
8 than significant impact.

9 MR. SARVEY: So is there a mechanism or  
10 a process that we would use if, say the city of  
11 Ripon makes a determination as far as noise and  
12 impact that we feel doesn't match or concur with  
13 what the CEC has laid out as a condition.

14 What's the process there? I mean,  
15 there's no compliance manager, do we appeal  
16 directly to the Commission. How does that work?  
17 That part I don't understand.

18 MR. REEDE: In the two noise conditions  
19 that we included, your appellate route, so to  
20 speak, would be to the city of Ripon city council.  
21 You go to their planning department, and then you  
22 go right up the line.

23 MR. SARVEY: Thank you.

24 HEARING OFFICER VALKOSKY: Any further  
25 discussion on this topic?

1           COMMISSIONER BOYD: I want to make sure  
2   that all I've inferred from Mr. Westerfield's  
3   discussion and Mr. Valkosky's questioning of Mr.  
4   Westerfield regarding the processes to be followed  
5   here, and whether or not there's been a  
6   certification by the Secretary of Resources and  
7   what have you visavis what I read in the  
8   Applicant's petition as not agreeing with Mr.  
9   Westerfields' interpretation.

10           However, I infer from Ms. Warren's  
11   testimony that she is stipulating to Mr.  
12   Westerfield's interpretation of process and  
13   procedure and lets it go at that. Am I correct?

14           MS. WARREN: I guess it's difficult for  
15   me to say that the Applicant stipulates that  
16   complying with the state clearinghouse submittal  
17   procedures is necessary in an SPPE process.  
18   However, again, we believe that the purpose and  
19   effect of the state clearinghouse procedures has  
20   been complied with.

21           Our main concern with complying with the  
22   process, even if it doesn't need to be complied  
23   with, is simply time. And making all the time  
24   periods move along. And so if there's a way to  
25   work with minimizing the time delays due to the

1 state clearinghouse, we don't have any objection  
2 to that process.

3 COMMISSIONER BOYD: Well, the reason I  
4 raised the question, in the Applicant document it  
5 clearly states the Commission's procedures that  
6 have been certified by the Secretary of Resources  
7 as exempt. But we've heard a discussion today  
8 that they have not been so certified. So we start  
9 from a premise that's diametrically opposed, and  
10 we go downhill from there.

11 MS. WARREN: Yes. I think the  
12 Applicant, on this specific issue of submitting  
13 the documentation to the state clearinghouse is  
14 not moving away from its position that it has been  
15 certified by the resources as exempt.

16 However, again, our position at this  
17 point is that we don't object to the filing with  
18 the state clearinghouse. We would just urge that  
19 we do so in as expeditious a manner as possible.

20 COMMISSIONER BOYD: Very interesting.  
21 Okay, I'll pass over all the legal maneuvers and  
22 manipulations. Having personally felt pretty  
23 strongly -- and having worked at the Resources  
24 Agency -- that the Commission hasn't been granted  
25 any such exemption, I of course reacted to your

1 opening sentence.

2 But as I said in my opening question,  
3 you kind of just stipulated the process anyway,  
4 and that begs the question, so we'll let it go at  
5 that.

6 HEARING OFFICER VALKOSKY: Anything  
7 further for the witness? Any further discussion  
8 on this topic? Mr. Westerfield, would you like to  
9 move any portion of an exhibit?

10 MR. WESTERFIELD: Yes we would. I  
11 believe that staff's final initial study is  
12 tentatively marked as exhibit 22?

13 HEARING OFFICER VALKOSKY: That's  
14 correct.

15 MR. WESTERFIELD: Okay, then we would  
16 like to move that portion of it, entitled "Project  
17 Description."

18 HEARING OFFICER VALKOSKY: Is there any  
19 objection Ms. Warren?

20 MS. WARREN: No.

21 HEARING OFFICER VALKOSKY: Mr. Sarvey?

22 MR. SARVEY: No objection.

23 HEARING OFFICER VALKOSKY: Seeing no  
24 objection, that portion of exhibit 22 is admitted.  
25 And I'll note we just completed project



1 description, which is always one of the quicker  
2 topics on the agenda. Turning from that to the  
3 topics we take by declaration, I'd like to call  
4 biological resources. Ms. Warren?

5 MS. WARREN: Yes. my question is how  
6 would you like us to proceed? Do you want us to  
7 read all or any portion of it, merely list the  
8 portions of the exhibit and move the testimony, or  
9 how would you like to proceed on that?

10 HEARING OFFICER VALKOSKY: Listing the  
11 portions of the exhibit unless there are questions  
12 from someone would suffice for my purposes.

13 MS. WARREN: Biological resources, the  
14 Applicant's witness by declaration is John  
15 Cleckler. His testimony begins on page 40 of  
16 exhibit 25, and includes the following exhibits:  
17 exhibit 1, section 8.2 of the SPPE; from exhibit  
18 2, the relative portions of the SPPE Supplement A;  
19 exhibit 5, data response set 1A, numbers 28 and  
20 29; and exhibit 15, the draft initial study  
21 comments, set 1. We move this be --

22 HEARING OFFICER VALKOSKY: Okay, is  
23 there objection to this designated portion of the  
24 exhibits?

25 MR. WESTERFIELD: No objection.

1           HEARING OFFICER VALKOSKY: Seeing no  
2     objections, those portions are admitted. Mr.  
3     Westerfield?

4           MR. WESTERFIELD: Yes. correspondingly,  
5     staff would like to present the declaration of  
6     Rick York in the topic area of Biological  
7     Resources, and submit his testimony by  
8     declaration. And offers the relevant portions of  
9     exhibit 22 into the record.

10          HEARING OFFICER VALKOSKY: Any  
11     objection?

12          MS. WARREN: No objection.

13          HEARING OFFICER VALKOSKY: That portion  
14     of exhibit 22 is submitted. Is there a discussion  
15     from anyone on the topic of biological resources?  
16     Seeing none, we'll close the record on that topic.  
17     Next topic, Energy Resources. Ms. Warren?

18          MS. WARREN: Yes. The Applicant's  
19     witness in the area of Energy Resources was Mr.  
20     Steven Hill. His testimony on this matter was  
21     addressed as part of the project description, and  
22     has been admitted through that section of the  
23     testimony.

24          For reference, that was beginning on  
25     page 45 of exhibit 25, and included the exhibit

1 portions referenced by Mr. Hill in his testimony.

2 HEARING OFFICER VALKOSKY: Thank you.

3 Is there any objection to receiving those  
4 designated portions?

5 MR. WESTERFIELD: No objections.

6 HEARING OFFICER VALKOSKY: Seeing none,  
7 they are admitted. Mr. Westerfield?

8 MR. WESTERFIELD: Yes. In the topic  
9 area of Energy Resources staff would like to  
10 submit by declaration that part of its final  
11 initial study entitled energy resources, that was  
12 authored by Mr. Baker and Mr. Khoshmashrab, and  
13 ask that that part of our initial study be moved  
14 into evidence.

15 HEARING OFFICER VALKOSKY: The latter  
16 testimony, the supplemental testimony, is part of  
17 exhibit 26, correct?

18 MR. WESTERFIELD: Yes, that's correct,  
19 and I was about to get to that. As the Committee  
20 is aware, staff filed, as part of its errata  
21 filing on Thursday -- Friday, Friday --  
22 supplemental testimony in the area of energy  
23 resources, dealing with the question of whether  
24 the proposed project, in its configuration, would  
25 create a significant adverse impact upon energy

1 supplies or resources.

2           The initial conclusion, or the final  
3 conclusion in our initial study was that the  
4 project would not have that impact as a peaking  
5 unit. What the supplemental testimony was  
6 intended to do was to sort of broaden our  
7 conclusions to encompass a finding that the  
8 project, even if operate as a base load unit, also  
9 would not create a significant adverse impact on  
10 energy supplies or resources.

11           And so that was the essential  
12 conclusion, the nature of the testimony submitted  
13 by errata. We have not attached a declaration to  
14 this supplemental testimony as part of our filing  
15 on Friday, and so for that reason are willing to  
16 present Mr. Khoshmashrab to testify today to this  
17 supplemental testimony if the Committee so  
18 desires.

19           However, we would hope that the  
20 Committee would accept this testimony into  
21 evidence pursuant to our errata filing, pending no  
22 objection from any partner.

23           COMMISSIONER BOYD: I have no objection  
24 to the testimony, but it does continue to beg the  
25 question that was asked earlier about simple cycle

1     versus combined cycle. And I totally understand  
2     the economics, I totally understand the rather  
3     instant rampup, startup, and I totally understand  
4     that's what the Applicant has asked for.

5             That's fine, I don't have any problem  
6     with the description. I would just indicate that,  
7     knowing where the state is going with regard to  
8     its electrical need, I am hard-pressed to believe  
9     that, in a very short period of time, either  
10    somebody will wish that it had been done as a  
11    combined cycle plant, or will be asking to convert  
12    it to a combined cycle plant.

13            But I realize those are tough decisions  
14    to make in today's market at this point in time,  
15    so I'll let it go at that from my perspective. I  
16    don't know what my fellow Commissioners feel, but  
17    so be it.

18            COMMISSIONER PERNELL: Well, I would  
19    agree with the Presiding Member, but I do have a  
20    question as it relates to economics, and I guess  
21    that does keep coming up. Mr. Valkosky, this is  
22    for the Applicant.

23            In your analysis on the economic  
24    feasibility of the project, given the  
25    configuration, did you include the escalating

1 costs of natural gas?

2 MS. WARREN: Ms. Valkosky, I'm going to  
3 defer to Mr. Hill on that.

4 HEARING OFFICER VALKOSKY: Please do,  
5 Ms. Warren.

6 MR. HILL: When we do economic analysis  
7 we look at various gas prices, so the answer to  
8 your question is yes.

9 COMMISSIONER PERNELL: And given that  
10 your board's recommendation was to go forward with  
11 the project as is, as a essentially peaker  
12 project?

13 MR. HILL: I'm sorry, Commissioner,  
14 could you please restate the question? I'm not  
15 sure I understood it.

16 COMMISSIONER PERNELL: Well, I'm just,  
17 I'm having a -- in my preliminary analysis I'm  
18 coming up with something a little bit different.  
19 So my question is, given the analysis that you did  
20 and presented to the board, your MID board, they  
21 decided to continue along the path of the project  
22 as proposed?

23 MR. HILL: That is correct. They made  
24 the decision to go with the simple cycle plant.

25 COMMISSIONER PERNELL: Okay.

1 HEARING OFFICER VALKOSKY: And with  
2 that, is there any objection to the receipt of  
3 those portions of exhibits 22 and 26. For the  
4 record, Ms. Warren?

5 MS. WARREN: No objections from the  
6 Applicant.

7 HEARING OFFICER VALKOSKY: Okay. They  
8 are admitted. Is there any further discussion or  
9 public comment on the topic of energy resources?  
10 Seeing none, we'll close the record on that topic.  
11 The next topic is socioeconomics. Ms. Warren?

12 MS. WARREN: Yes, thank you.  
13 Applicant's witness, by declaration, on this topic  
14 is Fatima Yusef. And that testimony is at page 60  
15 of exhibit 25. It references exhibit 1, section  
16 8.8 of the SPPE; exhibit 2, SPPE supplement A,  
17 portions of exhibit 5, data response set 1A,  
18 number 55.

19 HEARING OFFICER VALKOSKY: Objections?

20 MR. WESTERFIELD: No objection.

21 HEARING OFFICER VALKOSKY: Admitted.  
22 Mr. Westerfield?

23 MR. WESTERFIELD: Thank you. The staff  
24 would like to submit, by declaration, its portion  
25 of the final initial study on the topic area of

1     socioeconomics offered by its author Amanda  
2     Stennick, and ask that that portion of exhibit 22  
3     be received into evidence.

4             HEARING OFFICER VALKOSKY:  Objections?

5             MS. WARREN:  No objection.  Admitted.

6     And discussion or public comment on the topic area  
7     of socioeconomics?  Close the record on that topic  
8     area.  Next topic area is Traffic and  
9     Transportation.  Applicant?

10            MS. WARREN:  Yes.  Applicant's witness  
11     on the declaration for this topic area is Jeannie  
12     Acutanza.  That testimony begins at page 80 of  
13     exhibit 25.  it includes exhibit 1, section 8.10  
14     of the SPPE, exhibit 2, SPPE supplement A portion;  
15     exhibit 5, data response set 1A, numbers 65  
16     through 79; and exhibit 15, the draft initial  
17     study comments, set 1, those portions that pertain  
18     to the traffic and transportation.

19            HEARING OFFICER VALKOSKY:  Objections to  
20     admission?

21            MR. WESTERFIELD:  No objection.

22            HEARING OFFICER VALKOSKY:  They are  
23     admitted.  Mr. Westerfield?

24            MR. WESTERFIELD:  Staff would like to  
25     offer that portion of its final portion of its



1 final initial study dealing with traffic and  
2 transportation, and authored by James Adams, by  
3 declaration. And ask that it be admitted into  
4 evidence.

5 HEARING OFFICER VALKOSKY: Objection?

6 MS. WARREN: No objection.

7 HEARING OFFICER VALKOSKY: Admitted.

8 Any discussion or public comment on the area of  
9 traffic and transportation? Seeing none, we'll  
10 close the record on that topic. Transmission Line  
11 Safety and Nuisance next. Ms. Warren?

12 MS. WARREN: Yes. Applicant's witness  
13 on this subject area is Stephen Hill, and that  
14 testimony begins on page 86 of exhibit 25, and  
15 references, that is it includes my reference  
16 exhibit 1, section 5 of the SPPE and Appendices  
17 5A, 5B, and 5C; exhibit 5, data response set 1A,  
18 number 76 through 82; exhibit 11, informal data  
19 response set 2; exhibit 12, informal data response  
20 set 3; and exhibit 15, the draft initial study  
21 comments, set 1, those portions that pertain to  
22 transmission line safety and nuisance and  
23 transmission system engineering.

24 HEARING OFFICER VALKOSKY: Objections to  
25 admission?

1 MR. WESTERFIELD: No objections.

2 HEARING OFFICER VALKOSKY: Seeing none,  
3 those portions of the exhibit are admitted. Mr.  
4 Westerfield?

5 MR. WESTERFIELD: Staff would like to  
6 offer by declaration its testimony in the subject  
7 of transmission line safety and nuisance. This  
8 testimony is authored by Dr. Obed Odoemelam, and  
9 ask that it be accepted into evidence.

10 HEARING OFFICER VALKOSKY: Objections?

11 MS. WARREN: No objection.

12 HEARING OFFICER VALKOSKY: No objection,  
13 it's admitted. Mr. Westerfield, are you going to  
14 include that portion of staff's exhibit 26, which  
15 is an errata to exhibit 22?

16 MR. WESTERFIELD: Just a moment, please.  
17 Yes, we would. In exhibit 26 there is a deletion  
18 from page 15-5. We would like to make that  
19 change.

20 HEARING OFFICER VALKOSKY: Okay.  
21 Objection? Seeing none, that's admitted. Any  
22 further discussion or public comment on the topic  
23 of transmission line safety and nuisance? Seeing  
24 none, we'll close the record on that topic.  
25 Worker Safety, Ms. Warren?

1 MS. WARREN: Thank you. Applicant's  
2 witness on this area is Patricia Danby, and that  
3 testimony begins on page 96 of exhibit 25. It  
4 incorporates exhibit 1, section 8.7 of the SPPE,  
5 and exhibit 2, SPPE supplement A, those portions  
6 that pertain to worker safety.

7 HEARING OFFICER VALKOSKY: Thank you.  
8 Objection?

9 MR. WESTERFIELD: No objection.

10 HEARING OFFICER VALKOSKY: It's  
11 admitted. I take it, Mr. Westerfield, your  
12 witnesses name is not "no na", so it must be no  
13 witnesses? Okay. Is there any public discussion  
14 or public comment on the topic of worker safety?  
15 Seeing none, close the record on that topic.  
16 Compliance and General Conditions. Ms. Warren?

17 MS. WARREN: Thank you. Again,  
18 Applicant's witness on this item is Steve Hill,  
19 and that testimony was incorporated into his  
20 project description testimony. That's at page 45  
21 of exhibit 25, and was his previous testimony this  
22 morning, so I just want to reference that.

23 HEARING OFFICER VALKOSKY: Okay, thank  
24 you for clarification. No objections?

25 MR. WESTERFIELD: No objections.

1 HEARING OFFICER VALKOSKY: No  
2 objections, that's admitted. Mr. Westerfield?

3 MR. WESTERFIELD: Staff would offer the  
4 portion of its final initial study dealing with  
5 the general conditions of exemption, which is --  
6 by declaration -- which is authored by Ms. Ila  
7 Lewis, and ask that it be accepted into evidence.

8 HEARING OFFICER VALKOSKY: Any  
9 objection?

10 MS. WARREN: No objection.

11 HEARING OFFICER VALKOSKY: Seeing no  
12 objection, it's admitted. Is there any comment on  
13 or discussion of on the topic of Compliance and  
14 General Conditions? Seeing none, we'll close the  
15 record on that topic. Next, Cultural Resources.

16 MS. WARREN: Thank you. Applicant's  
17 witness on this item is James Bard. That  
18 testimony is found at page 43 of exhibit 25, and  
19 incorporates exhibit 1, Section 8.3 and Appendices  
20 8.3A through 8.3C of the SPPE; exhibit 2, SPPE  
21 Supplement A, those portions that pertain to  
22 cultural resources; exhibit 4, the confidential  
23 cultural resource materials dates May 15th, 2003;  
24 exhibit 5, data response set 1A, numbers 30  
25 through 43; exhibit 6, data response set 1B,

1 numbers 39, 40, and 41; exhibit 9, data response  
2 set 1E, number 42; and exhibit 15, draft initial  
3 study comments, set 1, those portions that pertain  
4 to cultural resources.

5 HEARING OFFICER VALKOSKY: Objections?

6 MR. WESTERFIELD: No objections.

7 HEARING OFFICER VALKOSKY: Seeing no  
8 objections, they are admitted. Mr. Westerfield?

9 MS. WARREN: Let me just -- it's been  
10 brought to my attention as I look at the testimony  
11 that was submitted in exhibit 25 on page 43. I  
12 just want to bring to your attention, I have  
13 identified exhibit 4, the confidential cultural  
14 resource materials, those were not listed in the  
15 testimony as it was filed, but should be included  
16 in this declaration.

17 HEARING OFFICER VALKOSKY: I noted that,  
18 thank you for including exhibit 4.

19 MS. WARREN: Thank you.

20 HEARING OFFICER VALKOSKY: I'd hate to  
21 have an orphan exhibit out there.

22 MR. WESTERFIELD: So actually, I have a  
23 question of clarification. Are there any exhibits  
24 now that Applicant is asserting should be kept  
25 confidential?

1 MS. WARREN: The cultural and  
2 paleontological submittals that were granted  
3 confidential status would remain confidential, in  
4 accordance with the regulations.

5 MR. WESTERFIELD: And again, which  
6 regulation is that?

7 MS. WARREN: You know, I don't have,  
8 there's a --

9 HEARING OFFICER VALKOSKY: I believe  
10 they are at the 2500's, I think, in our  
11 Commissions regulations are procedures for  
12 designating and retaining confidential materials.  
13 It's a decision that's made by the executive  
14 director. And the access to those records is  
15 specified. Do you have anything to add, Ms.  
16 Warren?

17 MS. WARREN: Just, Mr. Westerfield, if  
18 you like, I can get you those specific references  
19 at the break. I have them handy, I just don't  
20 want to take the time to --

21 MR. WESTERFIELD: Yes, forgive me, I  
22 just didn't realize that had been done, that the  
23 executive director had designated those materials  
24 as confidential. Did that happen?

25 MS. WARREN: Yes, we've received

1 confirmation of that.

2 HEARING OFFICER VALKOSKY: Okay. We've  
3 admitted Applicant's exhibits. Mr. Westerfield,  
4 anything from staff on cultural?

5 MR. WESTERFIELD: Yes, staff would like  
6 to admit, by declaration, its testimony on  
7 cultural resources, part of the final initial  
8 study, that's authored by Dorothy Torres, and ask  
9 that it be received into evidence.

10 HEARING OFFICER VALKOSKY: Objections?

11 MS. WARREN: No objection.

12 MR. SARVEY: None.

13 HEARING OFFICER VALKOSKY: Discussion or  
14 public comment on the area of Cultural Resources?  
15 Seeing none, we'll close the record on that topic.  
16 The next topic is Geology and Paleontology. Ms.  
17 Warren?

18 MS. WARREN: Yes. We've got two  
19 sections that I'd like to point out on the  
20 paleontological resources. The witness is Lanny  
21 Fisk, and that's at page 75 of exhibit 25. And  
22 that includes exhibit 1, section 8.15 of the SPPE;  
23 exhibit 2, SPPE supplement A, those portions that  
24 pertain to paleontological resources; exhibit 15,  
25 draft initial study comments, set 1, those

1 portions that pertain to the subject matter.

2 Also, I would like to reference the  
3 testimony by Thomas Lae, starting at page 49 of  
4 exhibit 25, and those incorporate the following:  
5 exhibit 1, section 8.14 of the SPPE; exhibit 2,  
6 SPPE supplement A, those portions that pertain to  
7 the subject matter; exhibit 5, data response set  
8 1A, numbers 44 through 47; and exhibit 15, draft  
9 initial study comments, set 1, again those  
10 portions that pertain to the subject matter.

11 HEARING OFFICER VALKOSKY: Thank you.  
12 Objections?

13 MR. WESTERFIELD: No objection.

14 MR. SARVEY: No objection.

15 HEARING OFFICER VALKOSKY: They are  
16 admitted. Mr. Westerfield?

17 MR. WESTERFIELD: Yes, staff would like  
18 to submit its testimony in this topic area,  
19 paleontological and geological testimony be  
20 declaration. It's authored by Dr. Patrick  
21 Pilling. And ask that it be received into  
22 evidence.

23 HEARING OFFICER VALKOSKY: Objection?

24 MS. WARREN: No objection.

25 MR. SARVEY: No objection.



1 HEARING OFFICER VALKOSKY: No objection.

2 A portion of exhibit 22 is received.

3 MR. WESTERFIELD: Yes, those are the  
4 portions of exhibit 22. Staff also, as part of  
5 its errata, made minor changes to that testimony,  
6 and I guess that's part of exhibit 26. And ask  
7 that that be admitted into evidence.

8 HEARING OFFICER VALKOSKY: Okay. Any  
9 Objections?

10 MR. SARVEY: No objection.

11 MS. WARREN: No objection.

12 HEARING OFFICER VALKOSKY: No  
13 objections, that's admitted. Any public  
14 discussion or comment on the areas of geology and  
15 paleontology. Seeing none, we'll close the record  
16 on those topic areas. Next is Hazardous  
17 Materials. Ms. Warren?

18 MS. WARREN: Thank you. The witness on  
19 this topic is Karen Parker. That testimony begins  
20 on page 57 of exhibit 25, and incorporates exhibit  
21 1, section 8.12 of the SPPE; exhibit 2, SPPE  
22 supplement A, those portions that pertain to  
23 hazardous materials; exhibit 5, data response set  
24 1A, number 48; exhibit 15, draft initial study  
25 comments, set 1, those portions that pertain to

1 hazardous materials; and exhibit 20, the July 29th  
2 2003 letter from Steve Hill of MID to Dennis  
3 Fields of the San Joaquin County Office of  
4 Emergency Services, regarding submittal of  
5 emergency response plan and chemical inventory.

6 HEARING OFFICER VALKOSKY: Is there  
7 objection?

8 MR. WESTERFIELD: No objection.

9 MR. SARVEY: I guess there's no  
10 objection.

11 MR. WESTERFIELD: Well, I guess I'm  
12 wearing my Public Advisor hat for just a moment.  
13 So if I could ask for just a couple of minutes?

14 HEARING OFFICER VALKOSKY: Sure. We'll  
15 go off the record.

16 (Off the record.)

17 HEARING OFFICER VALKOSKY: Back on the  
18 record. All right, Mr. Westerfield, I believe we  
19 were looking to see if you were objecting to any  
20 of Applicant's exhibits?

21 MR. WESTERFIELD: Could you repeat all  
22 those? (laughter) No, sorry, no objection.

23 HEARING OFFICER VALKOSKY: Mr. Sarvey?

24 MR. SARVEY: Yes. I have one question  
25 about an exhibit dated July 29th, 2003 to Mr.

1 Dennis Fields, San Joaquin County Office of  
2 Emergency Services.

3 And basically, my question is does MID  
4 intend to comply with emergency plans and all the  
5 regulations that are normally required, or do they  
6 intend to not comply with the normal regulations  
7 of the CEC in terms of hazardous material plans  
8 and such?

9 MS. WARREN: I'm pulling up the letter  
10 as you speak. My recollection is that the letter  
11 does lay out the district's, Modesto Irrigation  
12 District's position on that matter. If you'll  
13 bear with me just one minute while I get a copy of  
14 that letter.

15 The district is not a business as  
16 defined by the pertinent sections of the health  
17 and safety code, and is not subject to the  
18 requirement of preparing the plan. However, the  
19 district has committed to make pertinent filings  
20 in relation to those safety matters, as it has  
21 done in the past.

22 MR. SARVEY: Is it possible to insert a  
23 condition of exemption that these requirements be  
24 fulfilled?

25 HEARING OFFICER VALKOSKY: Would

1 Applicant object to such a condition?

2 MS. WARREN: Applicant would object to  
3 additional conditions, in that Applicant has  
4 agreed that it will be filing pertinent documents.  
5 The essential difference here is that, in being  
6 subject to the plan, to submitting the plan, per  
7 the code section reference, involves a fairly  
8 hefty fee.

9 We have agreed to provide the  
10 substantive information in similar formats.  
11 However, without going through the formal plan  
12 process.

13 HEARING OFFICER VALKOSKY: Staff have  
14 any opinion on the desirability, the necessity for  
15 such a condition?

16 MR. WESTERFIELD: No, we don't have any  
17 comment on it. We have no position on this at the  
18 moment.

19 MS. WARREN: Okay, so Ms. Warren, it's  
20 primarily the matter of the fee, as I understood?

21 MS. WARREN: Right. And the statutory  
22 fact that the definition of business that it  
23 incorporated into the relevant code sections  
24 simply does not include a public agency such as  
25 MID.

1 HEARING OFFICER VALKOSKY: Okay,  
2 although, let me clarify this. MID will  
3 nevertheless comply with the provisions, except  
4 for the filing?

5 MS. WARREN: We will comply with the  
6 substance of the provisions and requirements, yes.

7 HEARING OFFICER VALKOSKY: Okay.  
8 Anything further, Mr. Sarvey?

9 MR. SARVEY: No, thank you.

10 HEARING OFFICER VALKOSKY: Okay, again,  
11 any objection to admission?

12 MR. SARVEY: No objection.

13 MR. WESTERFIELD: No objection.

14 HEARING OFFICER VALKOSKY: No objection.

15 Those portions of the exhibit sponsored by  
16 Applicant are admitted. Mr. Westerfield?

17 MR. WESTERFIELD: Staff offers its  
18 testimony in the area of hazardous materials  
19 management, authored by Jeff Lesh and Rick Tyler.  
20 We offer it by declaration, and ask that it be  
21 admitted.

22 HEARING OFFICER VALKOSKY: Is there  
23 objection? Ms. Warren?

24 MS. WARREN: No objection.

25 HEARING OFFICER VALKOSKY: Mr. Sarvey?

1 MR. SARVEY: No objection.

2 HEARING OFFICER VALKOSKY: Before we act  
3 on the admission, I've got a couple of questions.  
4 i'd like to address this to staff. And it relates  
5 to the earlier discussion we had with the  
6 construction versus operational mitigation and  
7 enforcement.

8 Now if you look at condition Haz 1 and  
9 Haz 2 on page 88 of your testimony, it seems to me  
10 that those can be construed as operational  
11 conditions. Is that a correct understanding?

12 MR. WESTERFIELD: Haz 1 can be construed  
13 that way, yes.

14 HEARING OFFICER VALKOSKY: Yes, and haz  
15 2?

16 MR. WESTERFIELD: Haz 2 can also be  
17 construed that way.

18 HEARING OFFICER VALKOSKY: Okay.  
19 Assuming that's a correct construction, who then  
20 enforces haz 1 and haz 2?

21 MR. WESTERFIELD: Well, certainly haz 2  
22 is a matter of compliance with federal  
23 regulations. And I'm not intimately familiar with  
24 Title 40 in these particular regulations, I assume  
25 there is a federal jurisdiction that enforces

1     them.

2                 HEARING OFFICER VALKOSKY:   So then all  
3     haz 2 is saying is you shall comply with federal  
4     law?

5                 MR. WESTERFIELD:   That's correct.

6                 HEARING OFFICER VALKOSKY:   Is that  
7     really necessary as a condition?   And again, a  
8     condition -- the difficulty that I'm having,  
9     frankly, is that a condition is something that the  
10    Commission would enforce, okay?   Now, there's a  
11    lot of "conditions" that are out there that the  
12    Commission does not enforce.

13                And here we have a condition saying  
14    comply with federal law.   Well it seems to me that  
15    that goes without saying, especially if we're not  
16    going to be doing any monitoring to ensure that  
17    compliance.

18                MR. WESTERFIELD:   You're saying that it  
19    goes without saying that --

20                HEARING OFFICER VALKOSKY:   That they're  
21    under a duty to comply with federal law.

22                MR. WESTERFIELD:   Yes.

23                HEARING OFFICER VALKOSKY:   Right.   Yes,  
24    it does.   So why are we repeating it here,  
25    especially when we are not monitoring whether or

1 not they comply?

2 MR. WESTERFIELD: I stand corrected. It  
3 is staff's position that staff intends to monitor  
4 compliance with federal law under this topic here.

5 HEARING OFFICER VALKOSKY: Okay. Then  
6 this is an instance of operational compliance and  
7 enforcement, right?

8 MR. WESTERFIELD: Yes.

9 HEARING OFFICER VALKOSKY: Is the same  
10 true for haz 1?

11 MR. WESTERFIELD: Yes it is.

12 HEARING OFFICER VALKOSKY: Okay, thank  
13 you for that clarification. With that, that  
14 portion of exhibit 22 is admitted. I'm informed  
15 by Mr. Westerfield, in his dual role as Public  
16 Advisor, that we have a member of the public that  
17 would like to comment on a couple of topics.

18 There's two ways we can do this, and  
19 certainly leave it to you, Ms. Kaefer. You can  
20 comment on energy resources and compliance at this  
21 point, since we've already dealt with those  
22 topics, or you can wait until this evening. The  
23 choice is entirely yours.

24 MS. KAEFER: I don't want to disrupt the  
25 meeting, I just didn't realize -- I mean, I



1 thought I had to wait until tonight, and when you  
2 asked for public comment, i filled out the blue  
3 card --

4 HEARING OFFICER VALKOSKY: No, we are  
5 eminently flexible, so we will accommodate you.  
6 So would you prefer to go this evening? If you'd  
7 like to go now that's fine too. Why don't you go  
8 now?

9 MR. WESTERFIELD: Again, in my role as  
10 Public Advisor, when I -- as the Public Advisor I  
11 talked to Ms. Kaefer about this, and I think she  
12 expressed some interest toward me of speaking to  
13 at least this topic now, because she was ready to  
14 speak.

15 So I think we should fully give her that  
16 option, and not suggest that she should wait.

17 HEARING OFFICER VALKOSKY: That's the  
18 option we're giving her, Mr. Westerfield. It's  
19 totally up to Ms. Kaefer.

20 MS. KAEFER: Okay. I would like to  
21 speak now.

22 HEARING OFFICER VALKOSKY: If you could  
23 identify yourself for the record, and spell your  
24 last name, please?

25 MS. KAEFER: My name is Pam Kaefer, it's

1 K-a-e-f-e-r. And I'm a neighbor, second closest  
2 one to this project. And the first issue can  
3 wait, the energy resources. But I am really  
4 concerned on this compliance issue, because the  
5 city of Ripon, per Tom Tripstra (sp), the city  
6 attorney, has told me the city council actually  
7 voted years ago to not enforce the noise element.

8           There is no code enforcement for noise  
9 in the city of Ripon, period. So, short of going  
10 before the city council and getting them to vote  
11 again, and using this project is that, you know,  
12 there really is something that needs to be  
13 addressed here.

14           We're SOL. And the way that this was  
15 written and added, it was my understanding -- and  
16 I have to say the MID people have been wonderful,  
17 they have been really informative and helpful and  
18 I truly believe that our interest is their  
19 interest, but this is my retirement, and in a year  
20 or five years or whatever, and if those people are  
21 gone, who do we go to?

22           HEARING OFFICER VALKOSKY: If what  
23 you're talking about is the specific exemption for  
24 noise, we're going to deal with that later.

25           MS. KAEFER: Yes, but the compliance

1     thing, because --

2                 HEARING OFFICER VALKOSKY:  Yes, there's  
3     a definite crossover.

4                 MS. KAEFER:  Right.  And this notice  
5     here about the Ila, because I was told and in the  
6     new papers that I have that were filed and what  
7     you just went through on the compliance was that  
8     there was specifically Ila, and I -- I don't want  
9     to go through here and make you wait for my  
10    time --

11                HEARING OFFICER VALKOSKY:  Ila Lewis I  
12    believe is the --

13                MS. KAEFER:  But she was going to  
14    oversee, and she would be the person, because the  
15    Energy Commission would oversee if we had a  
16    problem.  And now that isn't what's going to  
17    happen.  And actually I just underlined this, it's  
18    on page five -- and I don't know what this is.

19                HEARING OFFICER VALKOSKY:  Page five  
20    of --

21                MS. KAEFER:  This newest thing I just  
22    got.

23                HEARING OFFICER VALKOSKY:  You're  
24    talking about the errata?  Mr. Westerfield, help  
25    her out please.

1           MR. WESTERFIELD: Yes, this is part of  
2 what staff filed on Friday.

3           HEARING OFFICER VALKOSKY: Okay, we'll  
4 go off the record.  
5 (Off the record.)

6           HEARING OFFICER VALKOSKY: Back on the  
7 record. For the record, we're discussing now  
8 staff's exhibit 26. Ms. Kaefer, please.

9           MS. KAEFER: Okay, this particular  
10 paragraph says "throughout the construction and  
11 operation of the project" -- which to me is beyond  
12 construction -- "the project owner shall document,  
13 investigate, evaluate, and attempt to resolve all  
14 project related noise complaints."

15           Now, from what I just understood in that  
16 compliance part, that it's only during  
17 construction. And as soon as they're up and  
18 running, that's no longer valid. But now we've  
19 got to go to the city and not to Ila for  
20 compliance. So they threw this in, but then they  
21 took it back out.

22           HEARING OFFICER VALKOSKY: Well, we're  
23 going to get an answer. Dr. Reade?

24           MR. REEDE: What Ms. Kaefer is referring  
25 to, in noise condition one, we're asking that a

1 community survey be performed immediately after  
2 operations begin to verify that there is no  
3 significant adverse impact. After operations  
4 began, noise two kicks in.

5 And she raises the first part of noise  
6 two. However, it says, in the final sentence of  
7 noise two, "the project owner or authorized agent  
8 shall use the noise complaint resolution form, or  
9 functionally equivalent procedure acceptable to  
10 the city of Ripon, to document and respond to each  
11 noise complaint."

12 Now we have given the city of Ripon the  
13 noise complaint form. And in speaking with the  
14 Applicant, they're willing to work with the city  
15 of Ripon. The city of Ripon gave me no, well, the  
16 city of Ripon did not express a desire not to  
17 implement the conditions of exemption that we've  
18 written.

19 It was sent to the director of planning  
20 ahead of time. He agreed the city could function  
21 within those, and we incorporated it into the  
22 errata.

23 HEARING OFFICER VALKOSKY: Okay, then I  
24 guess the question is there's a difference between  
25 not indicating that you won't enforce the

1 conditions, and affirmatively indicating that you  
2 will enforce the conditions. Now if I understand  
3 what you've just said, you don't have the latter  
4 from the city of Ripon, is that correct?

5 MR. REEDE: We have the enforcement of  
6 the condition -- well, let's do condition of  
7 exemption number one. We will enforce that at the  
8 point of initial operation.

9 From the point of initial operations  
10 through continuing operations until the closing of  
11 the plant, it is the city of Ripon's  
12 responsibility, as the permitting agency, to  
13 enforce the LORS for that community.

14 We have attempted to assist them in  
15 giving them condition with teeth, and a resolution  
16 form that the Applicant agrees they can live with  
17 and respond to. However, because this is an  
18 exemption proceeding, we will step out of the  
19 picture after the community noise survey affirms  
20 that the plant is not creating a significant  
21 adverse impact to the community.

22 COMMISSIONER PERNELL: I think I  
23 understand the concept, and without, what I  
24 understand that the resident's are concerned about  
25 is how is that transition going to take place.

1 The project gets built, the Energy Commission  
2 compliance person steps out, does the Ripon  
3 compliance person automatically step in?

4 Is there a document somewhere that says  
5 that this is going to happen? I think one of the  
6 questions in my mind is the transition between the  
7 two compliance entities.

8 MR. REEDE: Commissioner Pernell, I have  
9 to go back to the point that we do not have  
10 permitting authority for construction. The city  
11 of Ripon does.

12 And in an attempt to assist the city of  
13 Ripon, because they are the ruling jurisdiction,  
14 so to speak, we've added Noise 2, so that there  
15 would be, in lieu of their noise regulations,  
16 which was all one paragraph, we put something so  
17 that the resident's concerns can at least be  
18 addressed and resolved.

19 Once the plant gets beyond initial  
20 operation, and its shown that the plant is not  
21 creating a noise impact, we step out of the  
22 picture.

23 HEARING OFFICER VALKOSKY: Okay, look,  
24 I'd really rather not get into the contents of the  
25 specific noise conditions. I'd really like to do

1     that in the context of the noise topic. And I  
2     think -- have you made your points about your  
3     general compliance --

4             MS. KAEFER: I think so, yes, my point  
5     is now it's good, but six months from now, if  
6     something goes wrong, then what?

7             HEARING OFFICER VALKOSKY: Right. And I  
8     think one of the things staff should think about  
9     to address with their noise witness is  
10    fundamentally what good is a condition to mitigate  
11    impacts or protect against impacts, which won't be  
12    enforced, because it's an operational condition.

13            MS. KAEFER: That's it.

14            HEARING OFFICER VALKOSKY: I mean,  
15    that's what I think concerns everybody, and  
16    frankly that's what concerns me too. Okay, but  
17    again, if this is specific noise, I think we'll  
18    deal with that in the noise topic.

19            MS. KAEFER: Okay. Thank you.

20            HEARING OFFICER VALKOSKY: Okay.

21            MR. WESTERFIELD: Still, in my Public  
22    Advisor role -- I know it's confusing. As I  
23    remember Ms. Kaefer also had a comment that she  
24    was interested in making in the topic of energy --

25            MS. KAEFER: I know, we'll wait until



1 after, we'll wait until then.

2 COMMISSIONER BOYD: Sometimes the Public  
3 Advisor's advice is taken, and sometimes it's not.  
4 (laughter)

5 MR. WESTERFIELD: The main thing is the  
6 advice is given.

7 HEARING OFFICER VALKOSKY: We were on  
8 hazmat, was there any public comment or discussion  
9 on that topic? Seeing none, we'll close the  
10 record on hazardous materials, and move on to the  
11 next topic, which is Hydrology and Water Quality.  
12 Ms. Warren?

13 MS. WARREN: Yes. Applicant's witness  
14 on this topic is Matt Franck. And that testimony  
15 begins at page 62 of exhibit 25, and incorporates  
16 the following: exhibit 1, section 8.13 of the  
17 SPPE; exhibit 2, SPPE supplement A, portions that  
18 pertain to water resources, hydrology and water  
19 quality; exhibit 3, the revised figure 4 for  
20 supplement A; exhibit five, data response set 1A,  
21 numbers 57 through 67; and exhibit 15, draft  
22 initial study comments set 1, those portions  
23 pertaining to the topic.

24 HEARING OFFICER VALKOSKY: Is there  
25 objection to admission of those exhibits?

1 MR. WESTERFIELD: No objection.

2 MR. SARVEY: No objection.

3 HEARING OFFICER VALKOSKY: Seeing no  
4 objection, they're received. Mr. Westerfield?

5 MR. WESTERFIELD: The staff offers its  
6 testimony in the topic area of hydrology and water  
7 quality by declaration. It is authored by Mr.  
8 Michael Krolak, and ask that it be received into  
9 evidence.

10 HEARING OFFICER VALKOSKY: Is there  
11 objection?

12 MS. WARREN: No.

13 HEARING OFFICER VALKOSKY: No objection,  
14 that's admitted. Again, Mr. Westerfield, if I  
15 could address your attention to condition water 1  
16 on page 912? Again, to my reading this is an  
17 operation condition over which the Commission  
18 would retain jurisdiction. Is that a correct  
19 interpretation of those conditions?

20 MR. WESTERFIELD: If you'll allow me  
21 just a moment.

22 HEARING OFFICER VALKOSKY: Please.

23 MR. WESTERFIELD: Mr. Valkosky, this is  
24 I think the condition that Dr. Reede was referring  
25 to earlier, where the CEC has a legislative

1 mandate to collect information and report it. And  
2 so, for this reason, we have recommended that the  
3 Commission retain jurisdiction to make sure that  
4 information is collected so we can fulfill that  
5 duty.

6 HEARING OFFICER VALKOSKY: Okay. So is  
7 that a yes? I mean, this is something, we would  
8 retain jurisdiction, and if there is a problem we  
9 would have -- not even going into what type of  
10 enforcement authority -- but we would attempt to  
11 ensure Applicant applied with this condition?

12 MR. WESTERFIELD: Yes.

13 HEARING OFFICER VALKOSKY: Thank you.  
14 Is there any further discussion on the topic of  
15 hydrology and water quality? Public comment on  
16 the topic? Seeing none, we'll close the record on  
17 that topic. Land Use. Ms. Warren?

18 MS. WARREN: Yes. We have two witnesses  
19 to cover this topic. The first one is Katie  
20 Carrasco, and that testimony begins on page 65 of  
21 exhibit 25, and incorporates exhibit 1, section  
22 8.4 of the SPPE; exhibit 2, SPPE supplement A,  
23 portions pertaining to land use; exhibit 5, data  
24 response set 1A, numbers 49, 50, and 51; and  
25 exhibit 15, the draft initial study comments set

1 1, portions pertaining to land use.

2 We'd also like to put forth the  
3 declaration of Stephen Long, and that testimony is  
4 at page one of exhibit 25, and incorporates  
5 exhibit 1, section 8.9 of the SPPE; and exhibit 2,  
6 SPPE supplement A.

7 HEARING OFFICER VALKOSKY: Objection?

8 MR. WESTERFIELD: No objection.

9 MR. SARVEY: No objection.

10 HEARING OFFICER VALKOSKY: Relevant  
11 portions of the exhibit are admitted. Mr.  
12 Westerfield?

13 MR. WESTERFIELD: Staff admits its  
14 testimony in the topic area of land use by  
15 declaration. Its authored by Mr. David Flores,  
16 and ask that it be received into evidence.

17 HEARING OFFICER VALKOSKY: Objection to  
18 the admission of that portion of exhibit 22?

19 MS. WARREN: No objection.

20 MR. SARVEY: No objection.

21 HEARING OFFICER VALKOSKY: Seeing none,  
22 that's admitted. Any public discussion or public  
23 comment upon the topic of land use? Seeing none,  
24 we'll close the record on that topic. Public  
25 Health next. Ms. Warren?

1 MS. WARREN: Yes. Applicant's witness  
2 is John Lowe. Testimony begins at page 51 of  
3 exhibit 25, and incorporates exhibit 1, section  
4 8.16 of the SPPE; exhibit 2, SPPE supplement A,  
5 portions pertaining to public health; exhibit 5,  
6 data response set 1A, numbers 52 and 53; exhibit  
7 13, informal data response set 4, number AQ-2.

8 HEARING OFFICER VALKOSKY: Objections?

9 MR. WESTERFIELD: No objection.

10 MR. SARVEY: No objection.

11 HEARING OFFICER VALKOSKY: Portions of  
12 those exhibits are admitted. Mr. Westerfield?

13 MR. WESTERFIELD: I'm sorry, Mr.  
14 Valkosky. We actually do have an objection.

15 HEARING OFFICER VALKOSKY: You do, which  
16 portion and the basis for it?

17 MR. WESTERFIELD: I would like to have  
18 Dr. Reede address the portion and the basis of the  
19 objection.

20 HEARING OFFICER VALKOSKY: You could,  
21 yes please. Identify the exhibit.

22 MR. REEDE: I received an e-mail from  
23 the staff who propounded the public health  
24 section. Upon their review of the testimony by  
25 the Applicant they state that cancer risk, chronic

1 and acute non-cancer hazard indices need to be  
2 revised to reflect the updated health risk  
3 assessment available in supplement A of June 20th  
4 of the SPPE -- I believe that's June 23rd to the  
5 SPPE. The figures cited in the testimony by John  
6 Lowe are from the original risk assessment, not  
7 from the revised risk assessment.

8 HEARING OFFICER VALKOSKY: Ms. Warren,  
9 are you prepared to respond to that? We will be  
10 taking a recess in a few minutes. Maybe you would  
11 want to check with your witnesses then?

12 MS. WARREN: Yes, I would appreciate the  
13 ability just to confer with my witness, and we'll  
14 get back on that.

15 HEARING OFFICER VALKOSKY: Yes. We'll  
16 hold our action on this exhibit at this time, and  
17 revisit that later in the day. Doctor, would you  
18 address specifically the exhibit you're referring  
19 to? Is that exhibit 25?

20 MR. REEDE: Yes sir. It's exhibit 25,  
21 and it's John Lowe's testimony. They use the  
22 cancer risk, chronic and acute non-cancer hazard  
23 indices from the original application for the  
24 original SPPE application.

25 They revised those indices in the ZOD

1 supplement A. Mr. Lowe's testimony uses the ones  
2 that were originally submitted in April, instead  
3 of the revised ones that were submitted in June.

4 MS. WARREN: Yes, and we're just taking  
5 a quick look at that and will confirm that --

6 HEARING OFFICER VALKOSKY: Right. We'll  
7 deal with that after the recess. Mr. Westerfield,  
8 staff portion of public health?

9 MR. WESTERFIELD: Staff would like to  
10 offer its testimony by declaration in the topic  
11 area of public health. It's offered by Ramesh  
12 Sundareswaran, and ask that that portion of  
13 exhibit 22 be admitted.

14 MS. WARREN: No objection.

15 MR. SARVEY: No objection.

16 MR. WESTERFIELD: We also have  
17 additional information, additional testimony by  
18 the errata. Errata staff filed Friday in the area  
19 of public health. So we ask that that amendment  
20 to the testimony also be admitted.

21 HEARING OFFICER VALKOSKY: Is there  
22 objection, Ms. Warren?

23 MS. WARREN: None.

24 HEARING OFFICER VALKOSKY: Mr. Sarvey?

25 MR. SARVEY: None.

1           HEARING OFFICER VALKOSKY: We'll admit  
2 those exhibits again. Mr. Westerfield, the  
3 proposed condition of exemption, public health 1,  
4 no page 12-14, appears to be once again an  
5 operation condition or -- by that I mean a  
6 condition by which the Commission assumes some  
7 sort of continuing oversight for the enforcement  
8 of that condition. Is that correct?

9           MR. WESTERFIELD: Mr. Valkosky, if you  
10 again review public health 1, I think you'll see  
11 that the kind of verification staff is requesting  
12 is to ensure that the program that we are calling  
13 for meets with our approval, meets with the CEC's  
14 approval as reviewed or analyzed by the CPM. So  
15 we are asking the jurisdiction to approve the  
16 program.

17           Once that is done, we are not  
18 recommending continuing enforcement or review.

19           HEARING OFFICER VALKOSKY: So we could  
20 end up in a situation where we have an approved  
21 program which may or may not be actually  
22 implemented?

23           MR. WESTERFIELD: Well, it's possible,  
24 but again there is a state -- I believe it's a  
25 regulation -- that deals with this problem. And



1     there is I believe a state authority that is  
2     responsible for dealing with this kind of thing.  
3     I can't cite you the citation right now, but we  
4     can get that to you.

5             HEARING OFFICER VALKOSKY:  Okay, that's  
6     fine, but then we go back to my question again on  
7     hazardous materials.  If this is the law that  
8     they've got to comply with why are we even  
9     conditioning it?

10            Because I'm, you know, one of the  
11     assumptions I think that the Committee deals with  
12     is yes, there is a wide body of law out there.  
13     And Applicant is certainly expected to comply with  
14     it all.  What I'm wondering is why do we seem to  
15     be calling out very specific, very discrete  
16     portions of that wide body of law if in fact we  
17     are not independently doing any monitoring?

18            MR. WESTERFIELD:  Yes, I understand.

19            HEARING OFFICER VALKOSKY:  Okay.

20            MR. WESTERFIELD:  I think, in this  
21     instance, we are asking that the program be set up  
22     in a way that we feel is appropriate.  Then there  
23     is law out there once the program is set up that  
24     we are not speaking to that can take over and see  
25     that the application of biocide to prevent

1 Legionella will be followed.

2 HEARING OFFICER VALKOSKY: So you're  
3 saying that that law which actually covers this  
4 area doesn't specify how to set up the program?

5 MR. WESTERFIELD: I'm trying to remember  
6 what that law says. It's hard for me to do that  
7 for the moment.

8 HEARING OFFICER VALKOSKY: Understood.

9 MR. WESTERFIELD: But the concept, we  
10 have confidence that the law will be enough to  
11 maintain or review this in the future. But we  
12 certainly can address that concern in more detail  
13 in a future brief.

14 HEARING OFFICER VALKOSKY: That will be  
15 fine, I'm just raising the question at this point,  
16 Mr. Westerfield. Any further discussion or public  
17 comment on the area of public health? Now we're  
18 going to keep this topic open pending the  
19 outstanding objection to exhibit 25, which  
20 hopefully will be resolved one way or the other.

21 MS. WARREN: Hearing Officer Valkosky?

22 HEARING OFFICER VALKOSKY: Yes?

23 MS. WARREN: If' you'd like, we're ready  
24 to proceed now.

25 HEARING OFFICER VALKOSKY: Oh,

1 certainly.

2 MS. WARREN: We had the opportunity to  
3 confer while you were asking your question.

4 HEARING OFFICER VALKOSKY: You bet, Ms.  
5 Warren.

6 MS. WARREN: If it's acceptable, we  
7 thought the cleanest way to address this is -- we  
8 have Gary Rubenstein available, who participated  
9 in comparing the health risk assessment. And if I  
10 swear him in, we can get him to make the  
11 corrections and go from there.

12 HEARING OFFICER VALKOSKY: Is there  
13 objection to that?

14 MR. WESTERFIELD: No objection.

15 MR. SARVEY: Will he be available for  
16 questions on public health and air quality as  
17 well?

18 HEARING OFFICER VALKOSKY: Right now, he  
19 will be available for questions on public health.  
20 He will be appearing later on air quality. Right  
21 now what we're dealing with, Mr. Sarvey, are the  
22 specific exceptions to exhibit 25.

23 MR. SARVEY: Okay, thank you.

24 HEARING OFFICER VALKOSKY: Swear the  
25 witness please.

1 Whereupon,

2 GARY RUBENSTEIN

3 was called as a witness herein, and after first  
4 having been duly sworn, was examined and testified  
5 as follows:

6 MS. WARREN: Thank you. Can you state  
7 and spell your name for the record please?

8 MR. RUBENSTEIN: Yes. My name is Gary  
9 Rubenstein, the last name is spelled R-u-b-e-n-s-  
10 t-e-i-n.

11 MS. WARREN: And could you briefly state  
12 your qualifications relative to the type of  
13 matters to be discussed?

14 MR. RUBENSTEIN: As noted in my direct  
15 testimony on air quality, I prepared the  
16 supporting air quality analyses that were used as  
17 the basis for many of the analyses presented in  
18 the public health section specifically, including  
19 the analyses of chronic and acute hazard indices  
20 and cancer risk.

21 MS. WARREN: Were you present to hear,  
22 in this room a few minutes ago, staff's objection  
23 to the testimony submitted by John Lowe in this  
24 matter?

25 MR. RUBENSTEIN: Yes.

1 MS. WARREN: Do you have any corrections  
2 or comments or clarifications that you would make  
3 in response to staff's objection?

4 MR. RUBENSTEIN: Yes. In response to  
5 staff's objection I reviewed Mr. Lowe's testimony,  
6 and as well the health risk assessment that was  
7 included in supplement A, which was also referred  
8 to as the ZOD supplement, and confirmed that Mr.  
9 Lowe's testimony does contain typographic errors  
10 in three locations in which he did not update the  
11 health risk numbers based on the analysis that was  
12 submitted in June in supplement A.

13 In particular, on page 53 of exhibit 25,  
14 at the second full paragraph down, the paragraph  
15 that begins "the excess lifetime cancer risk" in  
16 the second line of that paragraph is a number that  
17 reads "0.075 times 10 to the minus sixth". That  
18 number should be 0.22 times 10 to the minus sixth.

19 In the next paragraph below, the  
20 paragraph begins "the chronic non-cancer hazard  
21 indices." And the center line of that paragraph  
22 is the number 0.0016. That number should be 0.002.

23 And in the next paragraph following, the  
24 paragraph that begins "the acute non-hazard  
25 indices", there is a number in the first line,

1 0.0165. That number should be 0.02.

2 With a correction of those three  
3 typographic errors these numbers are now  
4 consistent with the values that were present in  
5 the updated health risk assessment included with  
6 supplement A. None of the conclusions with  
7 respect to the significance of these health risks  
8 are changed because they are remain below the  
9 regulatory thresholds that Mr. Lowe cited in his  
10 testimony.

11 MS. WARREN: Thank you. No further  
12 questions.

13 HEARING OFFICER VALKOSKY: Staff?

14 MR. WESTERFIELD: Well, with those  
15 corrections, we drop our objection.

16 HEARING OFFICER VALKOSKY: Mr. Sarvey?

17 MR. SARVEY: No objection.

18 HEARING OFFICER VALKOSKY: With that, we  
19 will receive that for the public health portion of  
20 exhibit 25, with the corrections noted by the  
21 witness. Again, are there any further public  
22 comments or discussion of the topic of public  
23 health?

24 Seeing none, we'll move to the next  
25 topic, transmission system engineering. Ms.

1 Warren?

2 MS. WARREN: Yes. Applicant's witness  
3 on this topic is again Steven Hill. And his  
4 testimony on this topic was included in the  
5 previous topic with transmission safety and  
6 nuisance. There was at 86 of exhibit 25, and the  
7 exhibits that were incorporated therein.

8 HEARING OFFICER VALKOSKY: Is there  
9 objection to receipt of those portions?

10 MR. WESTERFIELD: No objection.

11 MR. SARVEY: No objection.

12 HEARING OFFICER VALKOSKY: They are  
13 admitted into evidence. Mr. Westerfield.

14 MR. WESTERFIELD: Staff would like to  
15 submit its testimony on transmission system  
16 engineering. A declaration. This is testimony by  
17 Ms. Laiping Ng and Al McCuen. We ask that these  
18 portions of exhibit 22 be received into evidence.

19 HEARING OFFICER VALKOSKY: Is there  
20 objection?

21 MS. WARREN: No objection.

22 MR. SARVEY: No objection.

23 HEARING OFFICER VALKOSKY: They are  
24 admitted. Is there any public comment or further  
25 discussion on the area of transmission system

1     engineering?  Seeing none, we'll close the record  
2     on that topic.  And the last topic before the  
3     impending recess, waste management.  Ms. Warren?

4             MS. WARREN:  Thank you.  Applicant's  
5     witness, a declaration on this item, is Karen  
6     Parker.  And that testimony begins on page 94 or  
7     exhibit 25.

8             It incorporates the following:  exhibit  
9     1, section 8.12 of the SPPE; exhibit 2, SPPE  
10    supplement A, portions that pertain to waste  
11    management; exhibit 5, data response set 1A,  
12    number 93; and exhibit 8, data response set 1D,  
13    number 93; exhibit 15, the draft initial study  
14    comments, set 1, portions that pertain to waste  
15    management; and finally, exhibit 19, the July 17,  
16    2003 e-mail from Maria Gillette from DTSC to  
17    Ramesh Sundareswaran, regarding the adequacy of  
18    staff clean data results from the site soils  
19    testing.

20            HEARING OFFICER VALKOSKY:  Thank you.  
21    Is there objection?

22            MR. WESTERFIELD:  No objection -- oh.

23            HEARING OFFICER VALKOSKY:  Hearing no  
24    objections -- you do have an objection?

25            MR. WESTERFIELD:  We do have something



1 of an objection, which will be addressed by Dr.  
2 Reede.

3 MR. REEDE: In section three, summary of  
4 the Applicant's testimony, paragraph two, it  
5 characterizes the phase one environmental site  
6 assessment by the Denali Group that was performed  
7 in 2002 as not observing evidence of recognized  
8 existing environmental issues at the site, as a  
9 result of past or present land use practices.

10 And it also characterizes the report as  
11 not observing indicators of the use generation of  
12 storage of hazardous substances at the site, nor  
13 did the Denali Report observe evidence of release  
14 of hazardous substance at the site.

15 When in fact the report of 2002 did  
16 emphatically recognize and recommend additional  
17 sampling and testing of the soils for pesticides  
18 prior to any site disturbance, which was the cause  
19 of the Commission requiring them to perform a  
20 phase two analysis, which the Department of Toxics  
21 and Substance Control agreed with, because it had  
22 had prior use as an agricultural operation.

23 And there was a concern about  
24 pesticides. So the testimony does not  
25 characterize the information that was contained in

1 the Denali Group report, which correctly, under  
2 the law, reported that there was prior pesticide  
3 use, and also stated that additional phase two  
4 testing needed to be performed prior to any site  
5 disturbance.

6 HEARING OFFICER VALKOSKY: Ms. Warren,  
7 do you have something of a response to something  
8 of an objection?

9 MS. WARREN: Something of an apology for  
10 overlooking the issue. The testimony does need to  
11 be corrected from that perspective. As has been  
12 acknowledged, the additional testing had been  
13 completed, and the final results were as noted  
14 earlier.

15 However, the lines, starting on line  
16 two, the characterization of the Denali Report in  
17 the second line, starting with that second  
18 sentence, through the end of the sentence on the  
19 sixth line, could be deleted.

20 HEARING OFFICER VALKOSKY: Okay, so for  
21 the record you would delete at --

22 MS. WARREN: Would you like me to read  
23 the portion that should be deleted?

24 HEARING OFFICER VALKOSKY: Please,  
25 please.

1 MS. WARREN: Can I take just a short  
2 recess to make sure I have the right deletion?

3 HEARING OFFICER VALKOSKY: Well, why  
4 don't you just hold on, because we're going to be  
5 taking a recess real shortly. And that will give  
6 you more time.

7 Okay, so we'll hold that. We'll go to  
8 staff. Do you have any evidence to offer in this,  
9 Mr. Westerfield?

10 MR. WESTERFIELD: Yes. We'd like to  
11 offer our portion of our final initial study, the  
12 waste management section. And offer it by  
13 declaration, and ask that that portion of exhibit  
14 22 be admitted into evidence.

15 HEARING OFFICER VALKOSKY: Objection?

16 MS. WARREN: I have nothing of an  
17 objection.

18 MR. WESTERFIELD: And there is actually  
19 one other bit that we would ask to be admitted.  
20 And that is part of staff's errata. It simply  
21 asks that the last sentence be deleted. So we ask  
22 that that also be admitted into evidence.

23 HEARING OFFICER VALKOSKY: Okay. Is  
24 there objection to that, exhibit 26. Ms. Warren,  
25 any objection to exhibit 26?

1 MS. WARREN: No objection.

2 MR. SARVEY: No objection.

3 HEARING OFFICER VALKOSKY: Okay. What  
4 we'll do at this point is hold the record open  
5 pending revision to Applicant's waste management  
6 testimony. After the recess we'll resume with  
7 that, and then proceed with alternatives, etc.

8 With that, we'll take a recess for 15 minutes.  
9 We'll reconvene at 3:35.

10 (Off the record.)

11 HEARING OFFICER VALKOSKY: Okay. We  
12 have reconvened. Ms. Warren, did you have any  
13 amendments to exhibit 25 in your waste management  
14 testimony?

15 MS. WARREN: Actually, I think at this  
16 point I'd like to somewhat retract my somewhat of  
17 an apology, and stand behind the testimony that we  
18 had on page 95. By doing so, I'd like to  
19 reference the actual section of the phase one site  
20 assessment.

21 It's on page 17 of that exhibit  
22 document, in section eight under conclusions, and  
23 the statement, the testimony on page 95, is  
24 virtually a quote, and I will read to you out of  
25 the site assessment, as I said under page 17,

1 section conclusion.

2 "Denali did not observe evidence of  
3 recognized, existing environmental issues at the  
4 site as a result of past or present land use  
5 practices. Denali did not observe indicators of  
6 the use, generation and storage of hazardous  
7 substances at the site. Denali did not observe  
8 evidence of release of hazardous substances at the  
9 site."

10 So, I believe, as quoted, supports the  
11 language in the testimony. Furthermore, again,  
12 I'd just like to point out that the testimony on  
13 page 95 continues in recognition that in response  
14 to the request, the California Department of Toxic  
15 Substances can control -- and the California  
16 Energy Commission -- the soil samples collected,  
17 and the additional testing was completed, and the  
18 site came back clear.

19 HEARING OFFICER VALKOSKY: Thank you.  
20 Staff have any response?

21 MR. WESTERFIELD: Well, I think staff's  
22 thoughts on it are that the bottom line is that we  
23 don't see a significant impact to the environment  
24 from any residual pesticide use.

25 HEARING OFFICER VALKOSKY: Okay, so that

1 in point of fact its more of an academic dispute  
2 rather than any dispute that would have an affect  
3 upon the suitability of this project for an SPPE,  
4 is that a correct statement?

5 MR. WESTERFIELD: Thank you.

6 HEARING OFFICER VALKOSKY: With that,  
7 we'll deny the objection and receive exhibit 25.  
8 Is there any further discussion on the topic area  
9 of waste management from anyone here present?  
10 Seeing none, we'll close the record on that.

11 Okay, we'll move to alternatives. And  
12 for this topic we only have witnesses from  
13 Applicant. Ms. Warren, present your witnesses  
14 please.

15 MS. WARREN: Well, you stole my thunder.  
16 The witness on this topic is Steven Hill. I would  
17 assume he is still under oath.

18 HEARING OFFICER VALKOSKY: That's  
19 correct.

20 MS. WARREN: And you have his name for  
21 the record. Do you have before you a copy of the  
22 alternatives section of exhibit 25 beginning on  
23 page 38?

24 MR. HILL: Yes I do.

25 MS. WARREN: And was that testimony

1     regarding alternatives prepared by or at your  
2     direction?

3             MR. HILL:   Yes.

4             MS. WARREN:  Do you have any additions  
5     or corrections or clarifications to the filed  
6     testimony?

7             MR. HILL:   No I do not.

8             MS. WARREN:  The testimony incorporates  
9     by reference some exhibits.  Can you please  
10    identify them?

11            MR. HILL:   Yes, exhibit one, section 9  
12    of the SPPE and exhibit 2, which is supplement A  
13    to the SPPE.

14            MS. WARREN:  To the best of your  
15    knowledge are all the facts contained in that  
16    testimony, including all the reference documents,  
17    true and correct?

18            MR. HILL:   Yes.

19            MS. WARREN:  Do the opinions contained  
20    in the testimony represent your best professional  
21    judgment?

22            MR. HILL:   Yes.

23            MS. WARREN:  Do you adopt this testimony  
24    in the proceeding?

25            MR. HILL:   Yes.

1 MS. WARREN: Can you please summarize  
2 your testimony regarding alternatives?

3 MR. HILL: Yes. As stated in my earlier  
4 testimony, we looked at a number of alternative  
5 sites. There were 27 in all, and it was pared  
6 down to three. Ripon, or the proposed Ripon site,  
7 at the corner of Doak Boulevard and South Stockton  
8 Avenue turned out to be the preferred site for  
9 several reasons.

10 One, it wa zoned industrial. It was in  
11 close proximity to our Stockton substation, so  
12 from a transmission standpoint it was terrific  
13 since the transmission line would only need to be  
14 about a quarter of a mile. There was good gas,  
15 and by that I mean fairly high pressure gas, and  
16 of sufficient quantity within a quarter of a mile.

17 And since these are going to be  
18 combustion turbines that was close, that was  
19 desirable. There were a number of supplies of  
20 water. There was the potential to use the gray  
21 water, but as it turned out the city of Ripon had  
22 a source of non-potable water that was even  
23 cleaner and more economical to use, so that was  
24 very attractive.

25 And so, for those reasons, those are the



1 primary reasons, that turned out to be our  
2 preferred site. And then as we filed supplement  
3 A, since we were so close to the wastewater ponds  
4 from a sewage discharge point, that also appeared  
5 to be a very good reason.

6 But it turns out that would not be  
7 possible. That's when we went to zero liquid  
8 discharge. But even with that, this turned out to  
9 be the preferred site.

10 MS. WARREN: Did you consider a no-  
11 project alternative?

12 MR. HILL: A no-project alternative was  
13 really not an option here, because, again the  
14 board of directors had made the decision to  
15 proceed with a 100 megawatt plant.

16 MS. WARREN: Did you consider any  
17 configuration alternatives?

18 MR. HILL: As part of the study we  
19 considered using a number of different turbines.  
20 We looked at a number of different renewable type  
21 technologies, but for what we needed, for a  
22 peaking application, a combustion turbine was the  
23 best alternative, and the most economical  
24 alternative for what we were trying to achieve.

25 MS. WARREN: Did you consider any

1 alternative technologies?

2 MR. HILL: Well, as I said, we looked at  
3 renewable type technologies -- solar, solar PV,  
4 wind power. Looked at various kind of  
5 interesting technologies, including new power and  
6 also hydro, but they weren't appropriate for that  
7 particular site.

8 MS. WARREN: NO further questions.

9 HEARING OFFICER VALKOSKY: Mr.  
10 Westerfield, any further questions?

11 MR. WESTERFIELD: We have no questions.

12 HEARING OFFICER VALKOSKY: Mr. Hill,  
13 before we get to Mr. Sarvey. You indicated, on  
14 page 38 of your testimony, that the, that you  
15 looked at technologies that might be available for  
16 peaking load operation.

17 And then you conclude at the last  
18 sentence of the last paragraph on page 38, that  
19 "the conventional simple-cycle technology, using  
20 natural gaseous fuel, is the best available  
21 technology for a peaking plant."

22 Now, I recall you talking in project  
23 description that this project would be available  
24 for 8,760 hours a year is that correct?

25 MR. HILL: That is correct.

1 HEARING OFFICER VALKOSKY: Does that  
2 influence at all your alternatives analysis?

3 MR. HILL: No. It is the district  
4 policy that in all our power combustion turbine  
5 plants that we permit them for 8760. If we were  
6 going to build another power plant the chances are  
7 very, very high that we would permit it for 8760.

8 HEARING OFFICER VALKOSKY: Correct. But  
9 in that case isn't it true that a combined cycle  
10 technology would be preferable?

11 MR. HILL: Even if we were to build  
12 another peaking plant we would permit it for 8760.

13 HEARING OFFICER VALKOSKY: Right. If  
14 you were to build another plant, and it was  
15 permitted for 8760, isn't it then true that a  
16 combined cycle technology would be a preferable  
17 alternative to a simple cycle technology, that's  
18 what I'm asking?

19 MR. HILL: I, if I understand you  
20 correctly, whether it's simple or combined cycle,  
21 we would permit it as 8760. Typically, if you  
22 want to run a plant at 8760 it would be combined  
23 cycle. But we permit both simple and combined  
24 cycle for 8760.

25 COMMISSIONER PERNELL: Why is that?

1 8760, I mean, what did that number come from?

2 MR. HILL: Well, that's running a plant  
3 basically 24 hours a day, 365 days a year.

4 COMMISSIONER PERNELL: Right, and I  
5 think ---

6 MR. HILL: So that's kind of infinite  
7 operational flexibility, that's why.

8 HEARING OFFICER VALKOSKY: Mr. Sarvey,  
9 any questions?

10 MR. SARVEY: I was trying to elicit the  
11 same answers you were in your last two questions.  
12 And also in the previous questions. But I do have  
13 two other questions I'd like to ask. When you  
14 chose the site, did you consider your future  
15 decision to convert this project to combined  
16 cycle?

17 MR. HILL: Yes.

18 MR. SARVEY: And did you analyze the  
19 possibility that this site is not appropriate for  
20 a combined cycle plant?

21 MR. HILL: I think I'd like to maybe  
22 restate that. We analyzed it for the suitability  
23 for combined cycle.

24 MR. SARVEY: And you stated earlier you  
25 had plans to convert this project to combined

1 cycle at a later date possibly?

2 MR. HILL: We do not have plans to  
3 convert it. We laid it out -- if our board of  
4 directors directs us to build a combined cycle  
5 plant that we can do it in the most economical  
6 fashion. But we have no plans, no design details  
7 that would imply that we were going to do that at  
8 this time.

9 MR. SARVEY: What I'm getting at here  
10 is, if you permit a plant for 8760 and you said  
11 earlier you had some intentions that you might go  
12 combined cycle, there's some certain health  
13 effects, noise, what-have-you that this site would  
14 no longer be acceptable for that project.

15 So is there not an alternative site that  
16 would perhaps be more appropriate?

17 MR. HILL: I'm sorry, Mr. Sarvey -- more  
18 appropriate for a combined cycle plant?

19 MR. SARVEY: Yes.

20 MR. HILL: Again, the reasons for  
21 picking this site were closeness to industrial  
22 zone, closeness to transmission, closeness to gas  
23 supply, closeness to water. Those are wonderful  
24 reasons to build a combined cycle plant. And we  
25 still think they're wonderful reasons and that's a

1     wonderful site for a combined cycle plant.

2             MR. SARVEY: Are you aware of the  
3     environmental impacts that are different between a  
4     combined cycle plant and a single cycle plant, and  
5     it's proximity to a residential community?

6             MR. HILL: I believe so. Did you have  
7     some specifics in mind?

8             MR. SARVEY: Just basically noise and  
9     air quality.

10            MR. HILL: We believe that the only  
11     impact to air quality might be additional  
12     emissions from a cooling tower. Certainly the  
13     combustion turbines will not be upsized. A  
14     combined cycle plant would be a two on one  
15     combined cycle plant, so the units are already  
16     there.

17            So adding steam turbine probably would  
18     not affect air quality except for the increase in  
19     size of our new cooling tower.

20            MR. SARVEY: So it would be fair to say  
21     that your selection of this site had nothing to do  
22     with any future plans to convert to combined cycle  
23     then?

24            MR. HILL: I would not say that it  
25     doesn't have any future plans to convert to

1 combined cycle. Again, the board gave us a  
2 specific direction to be able to lay this plant  
3 out so that if a decision is made at a later time  
4 it could be adapted to be a combined cycle plant.

5 MR. SARVEY: Thank you.

6 HEARING OFFICER VALKOSKY: So, based on  
7 that then, your conclusion was that yes, the site  
8 is suitable for combined cycle, is that a correct  
9 statement?

10 MR. HILL: Yes.

11 HEARING OFFICER VALKOSKY: Any redirect,  
12 Ms. Warren?

13 MS. WARREN: Well, I'd just like to  
14 followup and clarify for a moment. If the MID  
15 were to move from the single cycle to the combined  
16 cycle configuration, would you have to undertake  
17 any new approvals from the Energy Commission or  
18 undertake any other activity?

19 MR. HILL: It's certainly my  
20 understanding that we start the process all over  
21 again, because we would certainly tip the 100  
22 megawatt threshold, so yes we would have to go  
23 through an AFC process to do that.

24 MS. WARREN: No other questions.

25 HEARING OFFICER VALKOSKY: Mr.

1 Westerfield, recross?

2 MR. WESTERFIELD: No questions.

3 HEARING OFFICER VALKOSKY: Mr. Sarvey?

4 MR. SARVEY: No questions.

5 HEARING OFFICER VALKOSKY: Ms. Warren,  
6 are you moving your exhibit?

7 MS. WARREN: Yes.

8 HEARING OFFICER VALKOSKY: Is there any  
9 objection to receipt of that portion of exhibit 25  
10 dealing with alternatives?

11 MR. WESTERFIELD: No objection.

12 HEARING OFFICER VALKOSKY: Mr. Sarvey?

13 MR. SARVEY: No objection.

14 HEARING OFFICER VALKOSKY: Seeing no  
15 objection, it's received. Is there any further  
16 public comment please, or discussion? A speaker,  
17 please approach the microphone.

18 MS. KAEFER: I just wanted to quick add  
19 to that, under the conclusions under the energy  
20 resources that you guys came up with was "because  
21 it will consume substantial amounts of energy, the  
22 MEGS, with it's proposed simple cycle, will  
23 produce both peaking and baseload power in an  
24 efficient manner."

25 "Staff therefore concludes MEGS will not



1 create significant adverse impacts." The way I  
2 read that, though, if it had been 360 days a year  
3 or 365 days a year, that that wouldn't be true. I  
4 mean, am I correct in that assumption? I mean, if  
5 you're going to run it 365 days a year --

6 HEARING OFFICER VALKOSKY: Dr. Reede,  
7 are you prepared to respond to that? Or someone  
8 else here who can.

9 MR. REEDE: I have staff that can  
10 respond to it, if you want them to be sworn at  
11 this time.

12 HEARING OFFICER VALKOSKY: Please.

13 MR. REEDE: I call Shahab Khoshmashrab  
14 and Steve Baker to be sworn.

15 MR. WESTERFIELD: Well, I think the  
16 testimony that staff submitted is just Shahab's.

17 MR. REEDE: Okay, well just Shahab then.

18 MR. WESTERFIELD: Can we get another  
19 chair up here?

20 HEARING OFFICER VALKOSKY: Mr.  
21 Westerfield, you're putting both witnesses on?

22 MR. WESTERFIELD: We are going to put  
23 both witnesses on.

24 HEARING OFFICER VALKOSKY: Okay. Swear  
25 the witnesses please.

1 Whereupon,

2 SHAHAB KHOSHMAHRAB AND STEVE BAKER

3 were called as witnesses herein, and after first

4 having been duly sworn, were examined and

5 testified as follows:

6 MR. WESTERFIELD: Mr. Valkosky, would

7 you like me to ask just a couple of preliminaries

8 just to explain why we have two witnesses?

9 HEARING OFFICER VALKOSKY: Please do Mr.  
10 Westerfield.

11 MR. WESTERFIELD: Okay. First off,  
12 Shahab, did you author the supplemental testimony  
13 that was submitted as part of the staff's errata  
14 last week on energy resources?

15 MR. KHOSHMAHRAB: Yes.

16 MR. WESTERFIELD: And is it still your  
17 testimony today?

18 MR. KHOSHMAHRAB: Yes.

19 MR. WESTERFIELD: And Mr. Baker, did you  
20 participate in the preparation of this testimony  
21 in any way?

22 MR. BAKER: Yes, I supervised the  
23 preparation of the testimony.

24 MR. WESTERFIELD: So you are familiar  
25 with the testimony?

1 MR. BAKER: Yes.

2 MR. WESTERFIELD: And is it true and  
3 accurate to the best of your knowledge?

4 MR. BAKER: Yes it is.

5 MR. WESTERFIELD: So that explains why  
6 we have both witnesses, both are able to respond  
7 to any questions.

8 HEARING OFFICER VALKOSKY: Understood.  
9 Ma'am, would you like to ask the witnesses your  
10 question?

11 MS. KAEFER: In the analysis of the  
12 impacts, they're proposing as a peaking plant,  
13 except for three months every year. And your  
14 conclusion is based on that. And it says "because  
15 of the simple cycle configuration, even though it  
16 uses a lot more energy, but because it" -- should  
17 I read it in full? You guys don't know what I'm  
18 talking about, or do you?

19 What I read -- let me just read it. "As  
20 proposed, the MEGS would generate its power as a  
21 peaking plant, except for three months every year,  
22 in which it would generate baseload power. As  
23 compared to combined cycle configurations, simple  
24 cycle configuration, with its short startup time  
25 and fast ramping capability, is well-suited to

1 provide peaking power."

2 "However, combined cycle power plants  
3 are more suitable for providing baseload power,  
4 since they burn fuel more efficiently. Since the  
5 MEGS will be required to provide peaking power  
6 most of the time, and only be required to run on  
7 baseload for a short time every year, and also  
8 because the project's energy consumption is  
9 insignificant compared to natural gas reserves  
10 available, staff agrees with the Applicant that  
11 simple cycle configuration would best meet the  
12 project's objectives."

13 What I'm asking is, because that to me  
14 looks like, because it's only a short cycle and  
15 only three months, that that stands. But if  
16 they're running 365 days a year, does that still  
17 stand?

18 MR. KHOSHMAHRAB: Well, we'd have to  
19 re-analyze the testimony based on the given hours,  
20 the new hours.

21 MR. HILL: Could you speak up please?

22 MR. KHOSHMAHRAB: We have to reanalyze  
23 the energy resources testimony. Based on the new  
24 hours, we will have to reanalyze the testimony.

25 MR. BAKER: The energy resources

1 testimony, and supplemental testimony, was based  
2 on our understanding of the proposed project,  
3 which is run peaking most of the year, and run  
4 effectively baseload for up to three months of the  
5 year.

6 And given those numbers, Mr.  
7 Khoshmashrab concluded, and I agree, that the  
8 simple cycle is the preferable way to go.

9 If the project were proposed as a base  
10 load, to run all year around as baseload, then we  
11 would need to revisit it and reanalyze it. And  
12 it's possible that we'd reach a different  
13 conclusion. But our understanding is that's not  
14 what's proposed here.

15 MS. KAEFER: But it's my understanding  
16 that they're being licensed, they're going through  
17 this, and you say okay, they can run 365 days  
18 without having to change anything, as long as  
19 they're on this simple cycle and not going the  
20 other way.

21 So when they decide to do that, we go  
22 back to who's going to regulate that, or what?  
23 They can do whatever they want to? So there  
24 wouldn't be a need for them to do an analysis if  
25 it's not done now.

1           If they're licensing it for 365 days,  
2    would it not be the conclusion that  --

3           MR. BAKER:  I understand.

4           COMMISSIONER BOYD:  It's not a license,  
5    it's a air quality permit, if I'm not mistaken.

6           COMMISSIONER PERNELL:  Mr. Baker, the  
7    analysis that was done by you and your staff,  
8    under your direction, was it for the 8760 that the  
9    plant is talking about running?

10          MR. BAKER:  No sir, it was based for a  
11    peaker plant, which may operate baseload up to  
12    three months a year, which is quite a bit less  
13    than 8760 hours per year.

14          COMMISSIONER PERNELL:  Okay.  Does that  
15    then tell us that they can only run up to three  
16    months a year?

17          MR. BAKER:  No sir.  As far as we  
18    understand, the Commission is not being asked to  
19    limit the operating hours of the project.  We've  
20    only analyzed the project that we understood was  
21    being presented.  If the Applicant operates it  
22    differently from that, I don't know that we have  
23    anything to say about it.

24          HEARING OFFICER VALKOSKY:  But you do  
25    know that if you're presumed operating profile

1     were exceeded for another month, somewhere between  
2     one and nine months, that your analysis would need  
3     supplementing, is that correct?

4             MR. BAKER:   Yes sir.

5             MR. GARCIA:   So I guess to follow on to  
6     that question, do you have a feel as to where that  
7     breaking point would occur.  At which point would  
8     you say?  Oh, it's 3.5 or 3.87 or 4 point  
9     whatever, at which point you would change your  
10    conclusion that it's not a significant impact?

11            MR. KHOSHMAHRAB:  No.

12            MR. GARCIA:   No what?

13            MR. BAKER:   We don't have a feel for  
14    that.  If you were to ask us to analyze 12 months  
15    of baseload we could analyze that.  If you were to  
16    ask us to analyze six months we may or may not  
17    come up with the same conclusions, five months may  
18    or may not, seven months may or may not.  We can't  
19    tell, sir.

20            One thing that we'd look at is the  
21    importance of the owner to be able to operate as a  
22    peaker.  When you build a combined cycle plant you  
23    give away quite a bit of the flexibility a peaker  
24    offers in quick load carrying, load following,  
25    being able to vary your output quickly in order to

1 control varying loads on the system.

2 A district like MID, that's responsible  
3 for power control in its own system, needs peaking  
4 power capability. It's not like they're just  
5 sitting off at four corners selling bulk power to  
6 someone else who has to worry about keeping the  
7 lights on at the right voltage and frequency.

8 So they do need peaking capacity.  
9 Whether they have other adequate peaking capacity  
10 on their system, in order to allow them to build  
11 this project as a combined cycle, with its, you  
12 know, inherent lack of flexibility, would be  
13 something we'd look at in doing the analysis.

14 MR. GARCIA: Let me follow up on your  
15 answer. I think I heard you say you had not done  
16 an analysis to determine at what point your answer  
17 would change from no impact to some impact, but  
18 presumably there is a point in which it's  
19 something greater than three months but less than  
20 a year, at which point you would say "yes, there's  
21 an impact." Is that correct?

22 MR. BAKER: Yes, I think that's correct.

23 MR. GARCIA: Okay.

24 MS. KAEFER: Can I ask one other  
25 question? One paragraph, or sentence, says "since



1 the MEGS will be required to provide peaking power  
2 most of the time, and will only be required to run  
3 on baseload for a short time every year." What's  
4 the required word there mean? Why are you  
5 required to run on baseload for a short time every  
6 year?

7 HEARING OFFICER VALKOSKY: Ma'am, are  
8 you reading the staff's testimony? Okay, the  
9 supplemental testimony.

10 MR. KHOSHMAHRAB: Our understanding is  
11 they are required to run three months out of the  
12 year.

13 MR. HILL: Again, could you speak louder  
14 please.

15 MR. KHOSHMAHRAB: Our understanding  
16 from the Applicant is that they will run on  
17 baseload for up to three months out of the year.

18 COMMISSIONER BOYD: But the key word  
19 here is required. You said required.

20 MS. KAEFER: Required by whom?

21 COMMISSIONER BOYD: Are you, or the  
22 Applicant, are you required by anything to run  
23 baseload any period of time at all?

24 MR. HILL: Not that I'm aware of. And I  
25 don't know where those numbers are coming from.

1     So if you can show me in our application or  
2     whatever where those numbers are coming from, I'd  
3     appreciate it, because I'm not aware of that.

4             MR. REEDE:   Excuse me, Hearing Officer  
5     Valkosky?  In the transcript of the informational  
6     hearing, their director of load planning stated  
7     that they would be required to run 70 to 90 days  
8     per year to meet demand during their specific  
9     canning season.

10            The canning season runs from July to  
11     September, and coincides with their air  
12     conditioning peak demand.  And so they would be  
13     required to run the peaking plant so that they  
14     could alleviate that.

15            And during powerpoint presentation and  
16     transcript page 37, Mr. Mayor clearly states that  
17     there are some major fuel processors that process  
18     tomatoes and peaches, and they operate between 70  
19     and 90 days per year, usually starting in July,  
20     running through August, and into September.

21            At a minor load for us it is  
22     approximately 50 megawatts, and once it is  
23     operational it goes around the clock.  But it just  
24     exists during that period.

25            COMMISSIONER BOYD:  I think we have a

1 semantics problem here about the use of the word  
2 "required."

3 MS. KAEFER: Well, it says to require to  
4 run on baseload, not peak.

5 COMMISSIONER BOYD: Necessary to run --  
6 right. Well, I can't speak for the Applicant, but  
7 I'm going to interpret that the Applicant's  
8 witness said that they have high demand a certain  
9 time of the year, and would likely have to run  
10 i.e. be required to run the plant, almost as a  
11 baseload plant, during those extreme peak periods.

12 But I shouldn't be speaking for the  
13 Applicant, I'm just interpreting what I just  
14 heard.

15 What I understand is there's no  
16 requirement that they run the plant at all, or  
17 that they run it as a peaker, or that they run it  
18 as partial peaker or baseload plant. They've left  
19 their options open, by virtue of the air quality  
20 permit, they've left their options wide open to  
21 run it 24 by 365.

22 That wouldn't be very economic, but  
23 they're not prohibited from doing it. I'm sure if  
24 they really thought they were going to run that  
25 much they would build combined cycle. It's

1     terribly uneconomic to consume the amount of gas  
2     this will consume if it's going to be run around  
3     the clock.

4             But they're leaving themselves options,  
5     as I interpret it, to run during severe peak  
6     periods, i.e. run it all the time for some period  
7     of time. But you are correct in that there is no  
8     A, any requirement that they run; or B, ability to  
9     control the hours they do run, in this process.

10            Other than by the air quality district  
11     itself, by the permit that it gives for emissions  
12     purposes, or for operational purposes, I can't  
13     speak for them. But that's just my conclusions to  
14     what I'm hearing so far. Others can correct this  
15     later if I'm wrong.

16            COMMISSIONER PERNELL: But if I could  
17     add to that, just for the record, I would agree  
18     that there is no regulatory requirement, certainly  
19     by this Commission, and by you reading a staff  
20     document I can see where it could be misconstrued  
21     as a regulatory requirement.

22            Sounds like there is a need or  
23     administrative requirement to keep the various  
24     manufacturing plants running, so they might have  
25     to do that if its their obligation to provide

1 services or electricity.

2 But I would agree with our Presiding  
3 Member here, Commissioner Boyd, that there is no  
4 regulatory requirement. And so the word  
5 "required" being read in that document, could be  
6 somewhat misconstrued.

7 HEARING OFFICER VALKOSKY: Anything  
8 further, ma'am?

9 MS. KAEFER: Well, just in reading this,  
10 it looked to me like three months was, the  
11 efficiency and the emissions would be different if  
12 they ran it for all the time.

13 HEARING OFFICER VALKOSKY: Well, I think  
14 you've heard the staff witnesses state that, as  
15 far as energy resources go, their analysis is the  
16 plant is a peaker and up to three months a year  
17 baseload. And if it exceeded three months a year  
18 baseload they would have to reassess. That's, I  
19 think, the answer.

20 MS. KAEFER: Then can I ask you a  
21 question. And I don't know if it's you or them.  
22 If you knew they were going to run 365 would you  
23 want to see that? And if there were an air  
24 quality issue over that -- I mean, because I  
25 thought the whole purpose of this was to skip the

1 normal regulatory things, to get to a shorter,  
2 quicker version.

3 HEARING OFFICER VALKOSKY: You're  
4 correct on the whole purpose of it. Basically,  
5 the whole purpose is for the Commission to step  
6 back and not impose its regulatory authority  
7 because the regulatory regime imposed by other  
8 agencies will be sufficient. That is the purpose  
9 of this.

10 MR. GARCIA: I have a question for, I  
11 guess it's Mr. Rubinstein. This actually is in  
12 the section on public health. And when you were  
13 computing the risk assessment figures did you base  
14 your calculation on full load operation, 8760  
15 hours per year, which potentially this plant could  
16 operate at, or did you base this on a lesser  
17 number of operating hours?

18 MR. RUBENSTEIN: All of the analyses  
19 that we performed related to public health were  
20 based on a worst case assumption of 8760 hours per  
21 year of full load operation.

22 HEARING OFFICER VALKOSKY: Okay.  
23 Anything --

24 MR. RUBENSTEIN: I have a question for  
25 staff. In conducting your analyses of energy

1 resources, what parameters do you look at?

2 MR. KHOSHMAHRAB: Well, we compare the  
3 project to other technologies available. And  
4 other alternatives, and other -- basically,  
5 comparing the efficiency of the project to the  
6 other resources, and how much resources, energy  
7 resources, as far as natural gas there are to  
8 basically adequately feed the project.

9 MR. RUBENSTEIN: So, as you stated in  
10 your testimony, compared to all the natural gas  
11 reserves available, the consumption is  
12 insignificant.

13 MR. KHOSHMAHRAB: Yes.

14 MR. RUBENSTEIN: So, if I might take  
15 that one step further, and this plant is now  
16 operating at 8760 hours. Compared to all natural  
17 gas reserves available, it's still going to be  
18 insignificant?

19 MR. KHOSHMAHRAB: It's still going to  
20 be insignificant, because of the vast reserves of  
21 natural gas.

22 MR. BAKER: But that doesn't mean that  
23 we'd reach the same conclusion.

24 MR. RUBENSTEIN: Well, that's what I'm  
25 trying to understand. What else might affect your

1 judgment in this analysis?

2 MR. KHOSHMAHRAB: Well, the efficiency  
3 of the simple cycle compared to the combined  
4 cycle. And if you're running it 8760 hours per  
5 year, then your simple cycle, as far as natural  
6 gas burning efficiency, will be lower than a  
7 combined cycle machine.

8 MR. BAKER: Well, you're talking about a  
9 plant for combined use here. One that will be  
10 peaking part of the time and running baseload part  
11 of the time. You have to look at a tradeoff. You  
12 have to look at the operating flexibility offered  
13 by the simple cycle, versus the fuel efficiency  
14 offered by the combined cycle.

15 You can't have 100 percent of both. If  
16 you want one you have to give up some of the other  
17 and vice versa. If the project were proposed to  
18 run base load all the time, it's possible that our  
19 analysis would say simple cycle is not  
20 appropriate, it's a significant adverse impact on  
21 energy resources.

22 We might say that. I don't know, we  
23 haven't performed that analysis. But the  
24 Applicant's asking for something different from  
25 that. They're asking for a plant that, at least a



1 significant portion of the year is going to be  
2 required to do peaking duty and load following.

3           It's difficult to overemphasize the  
4 importance of having peaking and load following  
5 capability on an electrical system. Without  
6 sufficient load following ability your system  
7 becomes very brittle. It's very fragile and  
8 upsets can easily happen that can bring down the  
9 whole portion of the grid.

10           You can't just have a bunch of baseload  
11 plants. You have to have load following, you have  
12 to have peaking. How much, that's a decision that  
13 has to be made by the controlling entity, in this  
14 case, I believe, MID. They know what mode they  
15 have to serve, and they have to decide what  
16 resources they need -- load following versus base  
17 load or whatever, to meet that.

18           In this case they've presented us with a  
19 project which is largely peaking and load  
20 following, with a significant portion of baseload.  
21 And we've looked at it and agreed with them, from  
22 our point of view, that they need a peaking plant  
23 in order to meet some of their needs.

24           Yes, it would be nice if they could snap  
25 their fingers and turn it into a combined cycle

1 for three months of a year, and maybe some day  
2 they'll run at baseload more than three months of  
3 the year, we don't know that.

4 HEARING OFFICER VALKOSKY: Yes, I think  
5 the tie-in for this, and I assume counsel can  
6 address it in post-hearing submittals, but the  
7 impact of the project on energy resources is one  
8 of the two principal findings that the Commission  
9 has to eventually make in deciding whether or not  
10 to grant SPPE.

11 So therefore, I think the question seems  
12 to be becoming, from -- if I understood staff's  
13 witnesses -- there is not adverse affect on energy  
14 resources as long as the plant is operated as a  
15 peaker and as a baseload for no more than three  
16 months a year.

17 If the plant has operated as a base load  
18 for more than three months a year, well there  
19 might be or there might not be an impact on energy  
20 resources.

21 The fact is that the record is unclear  
22 on that point right now. And again, this is  
23 something -- and then you overlay that with the  
24 fact that the operative permit, the air permit,  
25 would apparently permit operation 24 hours a day,

1 seven days a week, 365 days a year.

2 So somehow all this has to be coalesced  
3 and balanced, so that the committee, and  
4 eventually the Commission, can make a finding on  
5 energy resources. And I think that's why the  
6 point is very important here.

7 Anyway, I submit that I don't think  
8 we're going to resolve that now.

9 MR. WESTERFIELD: Mr. Valkosky, I  
10 actually have a followup question to -- well, I'm  
11 trying to figure out the most efficient way to  
12 handle it. I know there were public comments, but  
13 there were some statements by staff here that I'd  
14 like to make sure we're clear on.

15 HEARING OFFICER VALKOSKY: We're just  
16 trying to get it clear.

17 MR. WESTERFIELD: And essentially my  
18 question is directed to either one of you. I am  
19 concerned on clarifying about when this point may  
20 be reached that Mr. Garcia was talking about or  
21 when this balance might tip in the other  
22 direction.

23 If, for example, the plant were to  
24 operate in a baseload capacity for some extended  
25 period of time. As I understood your testimony,

1 at one point, Mr. Baker, at some point in the 12  
2 month period that line would be crossed, or that  
3 balance would be tipped.

4 And I thought it was somewhat ambiguous  
5 what you were talking about, or what you were  
6 referring to. So could you first just clarify for  
7 the record what that metaphor refers to. When you  
8 were talking about that point being reached, or  
9 the line being crossed, or the balance tipped.

10 MR. BAKER: I'm sorry, I really don't  
11 understand your question. Be simple for me, Bill,  
12 please.

13 MR. WESTERFIELD: Mr. Garcia had asked  
14 you a question about, I believe it was a line  
15 being crossed. And that's a metaphor. And I  
16 don't know what you were really talking about when  
17 you responded to him. So I'm asking you to  
18 clarify that.

19 MR. BAKER: Okay. As I said a few  
20 minutes ago, if you need peaking power and load  
21 following power, then you build a simple cycle.  
22 If you need baseload power then you build a  
23 combined cycle. For a mix in between, you'd have  
24 different reasons to build one or the other.

25 There's some point between the decision

1 to build a combined cycle and the clear decision  
2 to build a simple cycle, where your decision would  
3 flip-flop. Perhaps at seven months of the year  
4 baseload and five months peaking load following  
5 that would be your crossover point.

6 Perhaps at five months, perhaps at some  
7 other time. One thing to keep in mind is that  
8 there are economic pressures on the plant owner to  
9 use the more efficient technology, as appropriate.

10 If MID thought, or thinks, or in the  
11 future thinks that a combined cycle would be more  
12 economic in the total picture of their system and  
13 keeping the lights on and controlling the voltage  
14 and the frequency and the things they have to do  
15 with their power plants, then at some time they  
16 might want to convert this plant to combined  
17 cycle, they might want to build another combined  
18 cycle plant, or buy one from someone else.

19 They might want to contract out for bulk  
20 power from someone else. They have a wide range  
21 of options, and the motivation for them to pick  
22 the right options is money. Energy costs money,  
23 whether they buy it as natural gas or whether they  
24 buy it as electricity from a bulk supplier.

25 You know, whether they generate it

1 themselves or buy it already generated. So it's  
2 not as though we're just saying "well, we don't  
3 care, they'll do whatever they want." We can say  
4 that, but we also do that knowing that they are  
5 strongly motivated to do the cheapest thing which,  
6 in the case of energy, is also the thing that  
7 wastes the least energy.

8           If fuel were free that would not be the  
9 case. But since they have to pay for that fuel  
10 they're motivated to use as little of it as they  
11 need to.

12           MR. WESTERFIELD: Okay, thank you, that  
13 answers my question.

14           COMMISSIONER BOYD: If I might, Mr.  
15 Chair, I think Mr. Baker's first answer,  
16 supplemented by his second answer, are accurate  
17 and good statements of what the energy world is  
18 like, and I have no -- I agree with it, I have no  
19 quarrel with it -- and it helps perhaps the  
20 citizens in the audience understand the  
21 difference, or the complexities of what power  
22 plants are.

23           There's no reason for us to doubt that  
24 MID intends to run the plant in any way other than  
25 they asserted to staff in their application of

1     probably running at a peaker for certain period of  
2     time, and then -- as I would say, due to  
3     agricultural operations, there is a peak period of  
4     the year where it will run constantly for awhile.

5             And that makes sense to me, too. But  
6     taking the citizen's point of view on this, and  
7     trying to help explain to them, I can appreciate  
8     their concern that, okay, these people say it's  
9     only going to be a peaker and run once in awhile,  
10    and a little bit of baseload, but you know, what  
11    if that's not right, and they run it all the time.

12            They have a legitimate concern. And all  
13    we can do is try to explain the world as we see  
14    it, and the way it should work. So that's, as Mr.  
15    Valkosky said earlier, what we're struggling with  
16    is how to best address that dilemma. There's  
17    nothing wrong with peaker plants. The state has  
18    more or less assessed it needs more peaker plants,  
19    so there will be peaker plants, not just this one.

20            There's liable to be more in this state.  
21    The California Power Authority is trying to build  
22    three of them as I speak right now. So it is a  
23    tough, difficult mix of what plants are baseload,  
24    and what's peaker, and which are load following.

25            And I have no reason to think that folks

1 here are trying to mislead anybody. But if, you  
2 know, you're a resident next door you want some  
3 assurance that it's going to be more or less as  
4 proposed by the Applicant and as described by the  
5 Applicant, and therefore analyzed by the CEC  
6 staff.

7 And I think you did -- as you were  
8 supposed to do under the circumstances. So it  
9 becomes our headache up here to wrestle with the  
10 outcome of that. And try to assure the citizens  
11 that they have some recourse if it doesn't turn  
12 out this way. But I totally understand the  
13 answers, and I hope the public understands a bit  
14 more bout how complicated this is.

15 It's not simple, even though to run a  
16 peaker plant fulltime would be terribly uneconomic  
17 if suddenly we're faced with what we were faced  
18 with a couple of years ago, an the lights are  
19 going to go out, everybody's going to be asked to  
20 run everything that they have for awhile to keep  
21 the lights on.

22 So that's a dilemma that folks have to  
23 deal with. Hopefully that won't ever be the case,  
24 because they do gobble a lot of gas, and with  
25 slight exception to what the staff said about



1     there's plenty of gas out there.  There's more gas  
2     in the world than there is oil, the trouble is  
3     it's not all here on the North American continent.

4             It's not easy to get to.  So I for one  
5     worry about anything that uses gas in great  
6     quantities.  But we do the best we can to balance  
7     the need.  So thank you for your answer.

8             COMMISSIONER PERNELL:  Can I just, for  
9     the sake of confusion, throw another variable in  
10    here.  And this is something that I've been  
11    thinking about very seriously as I sit here.  
12    Because there's been a lot of comments about the  
13    economics of it, and normally you wouldn't run it  
14    because the gas is too high.

15            But, you know, this is a municipal  
16    utility district.  And it's not regulated by the  
17    Public Utilities Commission.  So when the district  
18    gets ready, if they for example had to -- and I  
19    agree with the Commissioner, I don't think that  
20    they are, but to make an argument of economics,  
21    when the board can raise the rates just by voting  
22    to raise the rates to pay for the economics, I  
23    don't think the economic question is a good  
24    argument when it comes to the muni's.

25            It might be a good argument for the

1 IOU's, because you have another regulatory agency  
2 that's controlling the rates. So, as we -- and I  
3 say that because I was a member of a muni board of  
4 SMUD, I was President of the SMUD board.

5 So I got a little bit of a different  
6 view of how this works as it relates to a  
7 municipal utility district and how much money is  
8 being spent. So that is something that I'm going  
9 to have to wrestle with. I would feel more  
10 comfortable knowing that they can't just run 365  
11 days a year peaker power plants.

12 Whether they are going to or not, the  
13 question becomes how do we know whether they're  
14 going to do that. Is there going to be a  
15 condition that says "once we go over this, we're  
16 going to let somebody know." The other issue is  
17 if they do that, where's the breaking point?

18 I think Mr. Garcia had a good question  
19 that I'm not sure got answered. So there is a lot  
20 of things that we've got to think about up here,  
21 but I would suggest that, from our Hearing Officer  
22 Mr. Valkosky, that some of this stuff get briefed  
23 so we will know, because right now I'm not as  
24 comfortable as I was when I came up here.

25 MR. GARCIA: I'd like to ask staff a

1 couple of questions, just so that we can round out  
2 the record. And let me posit a hypothetical  
3 situation here.

4 Let's say that you have a combined cycle  
5 plant who's heat rate is 6,000. I know that's not  
6 your heat rate, but let's just say that it's  
7 6,000. And you have a simple cycle gas turbine  
8 who's heat rate is 9,000.

9 Given that those two units are operating  
10 the same number of hours, would it be correct to  
11 say that the gas turbine would be using 50 percent  
12 more fuel?

13 MR. BAKER: If they produce the same  
14 electrical output, yes.

15 MS. GEORGE: Okay. So for a plant of  
16 100 megawatt size, if it was operating at 8760, at  
17 full capacity, that difference is not  
18 insignificant, is it not?

19 MR. BAKER: We'd have to look at that.  
20 Insignificant to an individual homeowner is  
21 different from insignificant to a power utility,  
22 is insignificant to a gas supplier who supplies  
23 five western states.

24 MR. GARCIA: We're talking more than a  
25 million dollars in operating costs, aren't we, on

1 an annual basis?

2 MR. BAKER: I would have to calculate a  
3 number to answer that question exactly, but what  
4 I'm trying to get at is it all has to be taken in  
5 context. The gas consumption, the figures we're  
6 talking about, to a PG&E or a Southern California  
7 Edison is different from gas consumption to the  
8 individual homeowner who has to pay the bill every  
9 month for his own domestic consumption.

10 MR. GARCIA: Whatever that incremental  
11 cost that the operator of that unit would incur  
12 would be looking to passing on those costs to  
13 their ratepayers?

14 MR. BAKER: Well, in the past that's  
15 been true. Nowadays, I don't know.

16 MR. GARCIA: Okay.

17 HEARING OFFICER VALKOSKY: One last shot  
18 at alternatives.

19 MS. WARREN: Okay. While she's walking  
20 up, I just want to confirm that a lot has been  
21 said about MID's operational issues and I would  
22 hope that we would get a chance to respond to a  
23 few of the comments that have been made here this  
24 afternoon.

25 HEARING OFFICER VALKOSKY: You will, you

1 will. As soon as we're done receiving the  
2 comments.

3 MS. WARREN: Okay. I just wanted to get  
4 my placeholder in there.

5 MS. KAEFER: Okay, sorry. Can I address  
6 Steve? Somewhere I heard it's 79 million, give or  
7 take, for this plant. But if you were doing a  
8 combined cycle plant it would be like 129 million.  
9 Did I hear that from your or from somewhere in  
10 there?

11 So we're talking about \$50 million and a  
12 whole lot more time if you were going the other  
13 way right now?

14 MR. HILL: That's what I said earlier,  
15 yes.

16 MS. KAEFER: So, at what you just said,  
17 if it costs them a million bucks a year they could  
18 do that for 50 years and it would still be cheaper  
19 than if they had to license it as a combined cycle  
20 right now?

21 MR. HILL: Correct.

22 MS. KAEFER: Okay, that's all I wanted  
23 to know.

24 HEARING OFFICER VALKOSKY: Is there  
25 anything from anyone else, other than Applicant?

1 Ms. Warren.

2 MS. WARREN: Thank you. Some of these  
3 issues we will address when we get to the air  
4 quality. Since the question has come up, what  
5 type of review in other areas has been done on the  
6 8760, I think the other thing I would offer at  
7 this point is, there's been lots of questions on  
8 MID's resource planning.

9 We have available, to respond to some of  
10 those issues and maybe give you an overview of the  
11 planning process and how the configuration was  
12 arrived at, our supervisor in that area, manager  
13 in that area.

14 And I would offer to put Mr. Mike  
15 Kreamer, to respond to some of the comments that  
16 have been made regarding MID's resource planning,  
17 if that's acceptable?

18 HEARING OFFICER VALKOSKY: That would be  
19 fine. Swear the witness, please.  
20 Whereupon,

21 MICHAEL KREAMER  
22 was called as a witness herein, and after first  
23 having been duly sworn, was examined and testified  
24 as follows:

25 MS. WARREN: Could you please state and

1 spell your name for the record?

2 MR. KREAMER: My name is Mike Kreamer,  
3 last name is spelled K-r-e-a-m-e-r.

4 MS. WARREN: Can you please state your  
5 job title?

6 MR. KREAMER: My title is Manager of  
7 Long-term Resource Planning and Development.

8 MS. WARREN: And can you give some of  
9 your background and qualifications in that area?

10 MR. KREAMER: I began my career in 1969.  
11 I have almost all except the last two years in  
12 operations, both at, in private IOU companies  
13 within California, and the last 27 years here  
14 operating the electric system. The last two years  
15 in long-term planning.

16 MS. WARREN: Were you involved in MID's  
17 processes in arriving at the proposed  
18 configuration for the MEGS project?

19 MR. KREAMER: Yes, I was.

20 MS. WARREN: Could you describe that  
21 process for us?

22 MR. KREAMER: The process that we went  
23 through was a varied process. Modesto had a  
24 fairly large need for long-term resources. One of  
25 those was -- well, the magnitude of demand watts

1     was pretty large, and so our recommendation as we  
2     went through our planning process was to look at  
3     additional import capability, because we were  
4     starting to get limit. Which is the process we're  
5     working on now.

6             Another one was to take a look at  
7     additional internal generation and additional  
8     long-term purchases, which we're in the process of  
9     doing. This is the internal generation piece. As  
10    well as looking at renewables and demand-side  
11    management techniques that might help to meet that  
12    need.

13            In that process it was determined that  
14    -- actually what we did was, because of some of  
15    the energy utility problems over the last few  
16    years, we actually made a conscious decision to  
17    recommend a policy to our board, which they  
18    adopted, to go to an 80/20 policy. Which was 80  
19    long-term resource, 20 short.

20            And in that process we did not define,  
21    however, how much of that long-term process should  
22    be internal or how much should be external  
23    resource. So what we did do was provided them  
24    with an awful lot of information.

25            And we did a lot of studies in which we



1 were looking over the next 20 years in our long-  
2 term plan, what we needed as far as internal  
3 generation.

4 The recommendation was to develop about  
5 100 megawatts of internal generation. And at that  
6 point in time that's what we thought we needed.  
7 We had not made a cycle recommendation yet, so we  
8 went back and we were asked to take a look at the  
9 cycle recommendations of some of the other.

10 We did come back and recommend a two  
11 unit simple cycle, located somewhere within our  
12 electric system, as opposed to outside, so it  
13 wasn't an import to us. Which drove some of the  
14 locational issues.

15 The other thing we did was to take a  
16 look at the -- well, we did take that back to our  
17 board. Some of you may or may not be aware that  
18 we have two unit peaking project, which is early  
19 80's vintage, which has limitations on those units  
20 of 877 hours a year.

21 That, in the past, has been a real  
22 restriction. And over the years, even in 2000  
23 when we had the state problems we were forced to  
24 actually make a conscientious decision on whether  
25 to stop running when in fact it had a benefit to

1 most anybody, because it would have exceeded those  
2 hours.

3 We were trying to get through with the  
4 local air board. In fact, had moved forward in  
5 that direction a decision to try and expand those  
6 hours. But it was very confining.

7 So as we went to our board they came  
8 back, realizing that we were probably focusing  
9 more on about 50 percent operation throughout the  
10 year, most of which would be peaking and some  
11 base.

12 One of the things that we did do in that  
13 process, however, we evaluated the economics base  
14 several ways, because when we went to the board  
15 and made the two cycle selection, the simple cycle  
16 recommendation, they came back and said we'd like  
17 you to remove that limitation.

18 That limitation is very difficult. We'd  
19 like you to remove it for future use in case we  
20 end up in a position where we have to run those.  
21 Which is where the 8760 hours a year came from.

22 The other thing they did was, looking at  
23 that, they were very curious. And were very  
24 curious about the combined cycle versus the simple  
25 cycle economics. Obviously, combined cycle is

1 much more cost-effective, give or take, depending  
2 on how much you're going to run them. If you're  
3 only going to run them for a few hours a year then  
4 they really are not.

5 In our economic analysis, going out 20  
6 years, we did evaluate the two. And if you want  
7 to run them out 20 years based upon our operation,  
8 for our load, and the two units, you end up with a  
9 net present value difference of maybe a million  
10 dollars.

11 It's not a significant number, and  
12 primarily you have the issue of trying to run.  
13 You don't have the flexibility on the machines  
14 that you do on the simple cycle.

15 So because of that, you know, you have a  
16 lot of must run time and a lot of baseload  
17 operation. Which means you have to make sales, so  
18 you have to make assumptions on sales. So when we  
19 went through that the economics were fairly much a  
20 push.

21 But one of the things that it did do for  
22 us is we did need the simple cycle for peaking  
23 purposes. We have a couple of aging peakers that  
24 we're trying to address now to extend their life.

25 The other thing the board did do, as

1 Steve mentioned earlier, was ask us to go ahead  
2 and, at least, if nothing else, put it in a  
3 physical configuration where, if we ever needed to  
4 baseload, or actually combine cycles for more  
5 extended operation, we could do it.

6 But the actual removal of the limitation  
7 on hours was at the direction of the board, so we  
8 don't get into limitations on having to supply for  
9 reliability purposes, if we have to.

10 I think that's about as good a summary  
11 as I can give you, so you know how we got to where  
12 we were. So it was not merely an economic  
13 decision between combined cycle economics and  
14 simple. And not to mention the fact there are  
15 other economic incentives on the combined cycle.

16 If you find yourself, depending upon,  
17 you know, in the ISO realm or some other things,  
18 which we're not but we could be some day, the  
19 combined cycle, the fast start -- I mean simple  
20 cycle, fast start, the ability to move it up and  
21 down has ancillary service values that we thought  
22 also add benefit which you won't get out of the  
23 combined cycle.

24 MS. WARREN: So you've explained to us  
25 some of the thinking behind choosing the simple

1 cycle and why the board felt it necessary to have  
2 more flexible operating hours and so seek  
3 permitting at the 8760 level.

4 Does that mean the district anticipates  
5 that it will actually run this plant at that  
6 level?

7 MR. KREAMER: I think it's not so much  
8 we anticipate running at that level, it's that we  
9 would like to make sure that the barriers for  
10 running at that level are removed.

11 And from our perspective, we're willing  
12 to pay the additional cost that it takes to permit  
13 it for that to make sure that the barriers are in  
14 fact removed if in fact it becomes a necessity or  
15 a desirable approach to actually doing that.

16 I think, in one case --somebody  
17 mentioned well, if you were in that mode you'd  
18 probably do something different, if you were in  
19 that mode, 8760 baseload run. And that's probably  
20 true. I mean that's an evaluation we would go  
21 back and make if in fact we ever found ourselves  
22 in that position, running that year in and year  
23 out.

24 MS. WARREN: I have no further  
25 questions.

1 HEARING OFFICER VALKOSKY: Thank you.  
2 Mr. Westerfield?

3 MR. WESTERFIELD: No questions.

4 HEARING OFFICER VALKOSKY: Mr. Sarvey?

5 MR. SARVEY: No, I think we've  
6 thoroughly beat this topic up.

7 COMMISSIONER PERNELL: Well, I've got a  
8 question. I should have took a cue from Mr.  
9 Sarvey here, but --. Mr. Kreamer, thank you for  
10 being here and I think your analogy of the  
11 thinking of the staff and the board I think is  
12 great, and it helped me understand why we're going  
13 through this in terms of a simple cycle versus a  
14 combined cycle.

15 You mentioned that you have two plants  
16 already that are at simple cycle, 877 -- they are  
17 limited to 877?

18 MR. KREAMER: Yes.

19 COMMISSIONER PERNELL: And this  
20 particular plant you wanted to kind of get rid of  
21 that limitation. Not necessarily saying that you  
22 would have run them that long, but that you want  
23 the flexibility to do so.

24 And I think one of the things we're  
25 struggling with, in terms of our analysis of the

1 adverse impacts of doing that, is whether or not  
2 it changes -- this gets back to Mr. Garcia's  
3 question -- whether or not it changes the analysis  
4 on the impacts if it actually runs the entire  
5 8760, and whether or not that changes --.

6 I mean, I understand that you have the  
7 air quality permit, so this is not in terms of air  
8 quality, but it could be in terms of fuel  
9 availability and etc. And what happens if you  
10 actually run the simple cycle -- because you have  
11 the discretion to do so -- whether or not that  
12 changes our analysis in terms of impacts.

13 And I don't know that you can answer the  
14 question, I'm simply making the statement as to  
15 why I'm a little concerned about this, because  
16 there is no, we don't have a finite figure that  
17 we're trying to judge the impacts on. Mr.  
18 Rubenstein has said they take the worst case  
19 scenario, which would be the 8760 in terms of air  
20 quality, and I'm not sure that our staff has done  
21 that in terms of the impacts.

22 MR. KREAMER: I understand. As I --  
23 correct me if I'm wrong, but I think I heard about  
24 four questions. One is that there are four  
25 issues. One is that the air quality really is --

1 we have requested permitting for the 8760 so those  
2 issues are being addressed. I think a couple of  
3 others are, that we know of here, so bear with me.

4 But one was economics, one was the gas,  
5 and I think I heard this gentleman say that even  
6 if we run 24 hours a day, 365 days a year, it's  
7 still a fairly insignificant number as far as the  
8 gas goes. And of course that's --

9 COMMISSIONER PERNELL: Not in the  
10 economic realm.

11 MR. KREAMER: In the economic realm  
12 that's very true. However, if you're looking at  
13 the economic realm of say, a simple cycle  
14 operation versus a combined cycle, the combined  
15 cycle is more efficient and those things, but I  
16 think you have to kind of put that around the  
17 other way a little bit and say, if MID were to  
18 operate those units for MID in a full year around  
19 baseload operation, I think there's either one or  
20 two things has to happen.

21 Either we need to run that for  
22 reliability reasons, and we do have an obligation  
23 to provide. So we're either forced into running  
24 it for reliability operations -- and if that were  
25 the case we'd probably start seriously looking at



1 something that's more efficient, especially if we  
2 found ourselves doing that in the year in year out  
3 mode.

4 The other thing from an economic  
5 standpoint is that if somebody else were either  
6 providing or buying the ancillary services of the  
7 energy output of that, at a price, then that is  
8 actually better than what the gas and fuel costs,  
9 so in fact we're benefitting our customer.

10 So it's a two-fold economic thing,  
11 realizing again that the unit has ancillary value,  
12 so even if the state is buying the ancillary  
13 service I'm assuming that the ability for it to  
14 run would be cost-effective.

15 I hope that got to some of the questions  
16 you had.

17 COMMISSIONER PERNELL: Well, it tells me  
18 that, you know, if its economically feasible and  
19 you could sell the power, you're going to run them  
20 24/7?

21 CHAIRPERSON KEESE: Well, I think  
22 that's, obviously we would like to take advantage  
23 of economizing the units that we have, and I think  
24 everybody tends to do that, but they are, as you  
25 admit about a 9,000 heat rate unit.

1           So, you know, on a normal day in day out  
2 basis, unless there's something really going on, I  
3 would assume that the combined cycle units of  
4 other folks are going to beat it out. So, you  
5 know, it's a market, I don't know where the market  
6 goes. And if you have a market like we had in  
7 2000 they'd probably run a lot. In today's market  
8 they probably would not.

9           COMMISSIONER PERNELL: Well, we're going  
10 to try and not have a market like that again.

11          MR. KREAMER: I hope that went to some  
12 of the --

13          COMMISSIONER PERNELL: Yes, it did. And  
14 again, Mr. Kreamer, I want to thank you for coming  
15 up and explaining that.

16          MR. GARCIA: I have a couple of  
17 questions for Mr. Kreamer. I think it was you  
18 that was talking about some of the benefits of  
19 having a simple cycle being that you'd be able to  
20 ramp up relatively quickly and be able to provide  
21 loaded voltage stability to your local system.

22           But I just want to make sure that I  
23 don't misunderstand. These auxiliary services are  
24 currently available in the market, and you don't  
25 have to make a capital investment in order to

1     secure them. You can just buy them off the  
2     market.

3             And the tradeoff is, should you wind up  
4     running this unit as a baseload plant, then the  
5     tradeoff is the incremental fuel cost, which is  
6     not unsubstantial. You know, if my numbers are  
7     correct, it's a pretty substantial number.

8             And it seems to me that the only place  
9     that the utility can get those dollars from is  
10    either from selling those services to outside the  
11    system, or collecting them from its ratepayers.

12            MR. KREAMER: I'm not sure how to reply  
13    to that comment. I think one thing is that folks  
14    like Modesto Irrigation are self-providing  
15    entities. We operate, currently we operate under  
16    existing interconnection agreements. We provide,  
17    we build, we make sure that we have provided all  
18    the services, including ancillary services for  
19    ourselves.

20            That doesn't mean that there are not  
21    times when there are existing excess ancillary  
22    services, and those are the ancillaries I'm  
23    talking about, not just selling the full turbine.  
24    Although I guess there's times of the year when  
25    the full turbine could become that way.

1           But from our perspective, I think that  
2   anytime we have had to provide those services  
3   we're providing energy and ancillary service to  
4   ourselves, because we're providing the spinning  
5   reserve.

6           Since we also need those units for load we  
7   get the benefit of having the ancillary services,  
8   which I think, at the risk of making a statement  
9   that I don't really know as completely accurate, I  
10   said that I believe it probably is more cost-  
11   effective for us personally than just to buy  
12   something like spin.

13           I don't know if that even addressed your  
14   comment, but I hope it did n some respect. I  
15   think, yes, if we were going to build these just  
16   for the sake of selling, that's not what we would  
17   do. That's not exactly our goal, our goal is to  
18   self-provide, for the most part. But I didn't  
19   want to ignore the possibility that that was a  
20   possibility, that adds value.

21           COMMISSIONER BOYD: No questions.

22           COMMISSIONER PERNELL: Thank you, Mr.  
23   Kreamer.

24           HEARING OFFICER VALKOSKY: Okay, I think  
25   this is an observation for post-hearing

1     submittals, I think one of the concerns -- if I'm  
2     correct -- is that the Committee is concerned over  
3     whether the analysis is sufficient to cover worst-  
4     cast operations. That's defined as 8760 hours a  
5     year.

6             I think one of the things the parties  
7     can address in their post-hearing submittals is as  
8     to which areas they believe the record is  
9     incomplete, and which areas they believe that such  
10    an operation would be deficient. We already know  
11    energy resources would be one of the deficient  
12    areas, with the depth of that analysis. There may  
13    be others.

14            It's not something we really addressed  
15    in the topics, but put it in your post-hearing  
16    submittals for the Committee's consideration at  
17    that time.

18            With that, is there anything further on  
19    the topic of alternatives? Any public comment?  
20    we'll close the topic of alternatives. Thank you,  
21    gentlemen. Next, visual. We'll go off the  
22    record.

23    (Off the record.)

24            HEARING OFFICER VALKOSKY: Back on the  
25    record. The topic is visual resources. Ms.

1 Warren, your witness please.

2 MS. WARREN: Yes, we have our witness at  
3 this time, ready to be sworn in.

4 Whereupon,

5 THOMAS PRIESTLY  
6 was called as a witness herein, and after first  
7 having been duly sworn, was examined and testified  
8 as follows:

9 MS. WARREN: Can you please state and  
10 spell your name for the record?

11 MR. PRIESTLEY: Yes. My name is Thomas  
12 Priestly, P-r-i-e-s-t-l-e-y.

13 MS. WARREN: And if you would please,  
14 state your job title?

15 MR. PRIESTLEY: I'm a Senior  
16 Environmental Planner with CH2MHill. And I'm the  
17 lead planner responsible for the visual resources  
18 practice in the western region.

19 MS. WARREN: And are you familiar with  
20 the visual resources section of exhibit 25,  
21 Applicant's prepared testimony. And that would be  
22 beginning on page 90?

23 MR. PRIESTLEY: Yes, I am. I'm familiar  
24 with this testimony, and this testimony was  
25 prepared by myself and Wendy Haden in

1 collaboration. And I do adopt this as my own  
2 testimony.

3 MS. WARREN: Does the testimony contain  
4 a statement of your qualifications?

5 MR. PRIESTLEY: Yes it does.

6 MS. WARREN: And could you please  
7 provide us a brief overview of your education  
8 experiences as it pertains to your testimony  
9 today?

10 MR. PRIESTLEY: Very briefly, I have an  
11 undergraduate degree in city planning. I did  
12 graduate work at UC Berkeley, where I earned a  
13 Masters in City Planning, one in landscape  
14 architecture with an emphasis on environmental  
15 planning, and a Ph.D. in Environmental Planning.

16 I've been a practicing professional for  
17 well over 20 years. My specialty has been  
18 evaluation of the visual land use, other  
19 qualitative impacts of major facilities,  
20 particularly electric facilities, and I have been  
21 involved in analysis of a number of power plants  
22 that have come before this Commission for review.

23 MS. WARREN: Do you have any additions,  
24 corrections or clarifications to the filed  
25 testimony?

1 MR. PRIESTLEY: No.

2 MS. WARREN: The testimony incorporates  
3 a number of exhibits. Can you please identify  
4 them?

5 MR. PRIESTLEY: Yes I can. Exhibit 1 is  
6 section 8.11 of the SPPE; exhibit 2 is supplement  
7 A, those portions pertaining to visual impacts of  
8 the ZLD system; exhibit 5 is data response set 1A,  
9 numbers 83 through 91; exhibit 10 is data response  
10 informal set 1, numbers vis 83B; exhibit 13 is  
11 data response informal set 4 at number VR1;  
12 exhibit 27 is data response informal set 6; and  
13 exhibit 15 is draft initial study comments, set 1,  
14 those comments pertaining to visual resources.

15 MS. WARREN: All right. Thank you. To  
16 the best of your knowledge are all the facts  
17 contained in the testimony, including the  
18 reference documents, true and correct?

19 MR. PRIESTLEY: Yes.

20 MS. WARREN: And do the opinions  
21 contained in your testimony represent your best  
22 professional judgment?

23 MR. PRIESTLEY: Yes.

24 MS. WARREN: And you have stated that  
25 you adopt this testimony in this proceeding?



1 MR. PRIESTLEY: I do.

2 MS. WARREN: Can you please give us a  
3 summary of the testimony.

4 MR. PRIESTLEY: Yes, very briefly, in  
5 terms of the visual setting itself. The project  
6 site is a flat, open parcel located in an  
7 industrially zoned area adjacent to existing  
8 industrial facilities at the southern edge of the  
9 city of Ripon.

10 The project site is now entirely vacant,  
11 and does not include any features that would be  
12 considered to be visual resources. The closest  
13 residence with an unobstructed view toward the  
14 project site are located over a quarter of a mile  
15 away, to the west of the site.

16 The tops of the projects' taller  
17 elements will be visible from the city of Ripon  
18 Veteran's Park, which is located toward the north  
19 of the site.

20 But these will be seen in the context of  
21 existing industrial development that is a very  
22 well-established part of the view in that area.  
23 So in terms of the project itself, what it will  
24 be, it's description, the project will include an  
25 85 foot high exhaust stack, a 43 foot high

1 combustion turbine generator, and 40 foot high  
2 cooling tower, and 60 foot high transmission  
3 poles, that will be a rebuild of an existing  
4 transmission line, that will carry power from the  
5 plant to an existing substation about a quarter  
6 mile to the east.

7           The exteriors of the major project  
8 features will be finished with a neutral, low-  
9 contrast colors. Lights of the project will be  
10 shielded and directed downward, and switches will  
11 be installed on the project's taller facilities,  
12 so that they will be illuminated only when  
13 required.

14           And the project will be landscaped to  
15 meet all city landscape requirements. And this  
16 landscaping will include establishment of tall,  
17 fast-growing evergreen screening trees along the  
18 western edge of the project site. In terms of  
19 impacts, the summary is that the project will not  
20 result in any significant adverse visual impacts.

21           And to reach that conclusion the  
22 framework that we used was Appendix G of the state  
23 CEQA guidelines. These define a significant  
24 effect on the environment to mean a substantial or  
25 potentially substantial adverse change in any of

1 the physical conditions in the area affected by  
2 the project, including objects of historic or  
3 aesthetic significance.

4 And the aesthetic section of Appendix G  
5 of the guidelines lists four questions that lead  
6 agencies need to address to determine whether a  
7 project's visual effects are significant. These  
8 questions, and our assessment of the significance  
9 of the project's effects in light of them, I will  
10 summarize very briefly right now.

11 The first of these questions is would  
12 the project have a substantial adverse effect on a  
13 scenic vista? And we concur with staff's  
14 conclusion that the project's structures and  
15 plumes will not result in significant visual  
16 impacts under this criterion.

17 The second question is would the project  
18 substantially damage scenic resources, including  
19 but not limited to trees, rock outcroppings, and  
20 historic buildings within a state scenic highway?  
21 We concur with staff's conclusion that the  
22 projects structures and plumes will not result in  
23 significant visual impact under this criterion.

24 And we note that there are no state  
25 designated scenic highways in the project

1 vicinity, and no project elements would be located  
2 within the right-of-way of such a highway.

3 The third question is would the project  
4 substantially degrade the existing visual  
5 character or quality of the site and its  
6 surroundings? We concur with staff's conclusions  
7 that, with the mitigation measures that have been  
8 built into the Applicant's design of this project  
9 and the project as it has been proposed, that the  
10 impacts of the project's construction and of the  
11 project's facilities during their operational  
12 phase will be less than significant.

13 And based on reviews of the likely  
14 project related plumes, both we and staff agree  
15 that the plumes associated with the operations of  
16 the project's gas turbines and HERSIG's gas  
17 turbines will not be of sufficient size and  
18 frequency to create significant impacts on visual  
19 resources.

20 And question four, would the project  
21 create a new source of substantial light or glare  
22 that would adverse day or nighttime views in the  
23 area? Again, we concur with staff's conclusion  
24 that with the mitigation measures proposed as part  
25 of the project, the project would not create new

1 sources of light and glare that would adversely  
2 affect day and nighttime views in the area.

3 In addition, we concur with staff that  
4 the project as it has been proposed, will not  
5 result in cumulative impacts visual resources.  
6 And that it will be consistent with the major  
7 requirements of applicable LORS, and that through  
8 it's reviews the city of Ripon will ensure that  
9 the details of the project's final landscape and  
10 signage plans are consistent with the city's  
11 requirements for minimum site landscaping,  
12 screening of parking lots and storage areas, and  
13 sign regulation. And that is my summary.

14 MS. WARREN: Thank you. The witness is  
15 available for cross-examination.

16 HEARING OFFICER VALKOSKY: Could you  
17 just quickly summarize the chief mitigation  
18 measures that Applicant is proposing to use?

19 MR. PRIESTLEY: Okay. A couple. One is  
20 color treatment. The Applicant has proposed to  
21 treat the plant with neutral colors that would not  
22 contrast with their surroundings and would not  
23 cause undue glare.

24 In terms of lighting, the Applicant is  
25 proposing lighting that is minimal but consistent

1 with health and safety concerns, and as I  
2 indicated previously, to the extent feasible there  
3 will be switches so that lights that are not  
4 required can be turned off when they're not being  
5 used. There will be shields so that light can be  
6 directed downward so you won't have offsite light  
7 trespass.

8 If you take a look at the layout of the  
9 project on the site, one of the things that you'll  
10 notice is that there is actually a pretty good  
11 setback between most of the facilities and Doak  
12 Avenue, it's pretty generous. There is sufficient  
13 room on the site to accommodate the landscaping  
14 that the city requires, and the Applicant will be  
15 making a special point of providing a row of fast-  
16 growing trees along the western edge of the site,  
17 in addition to any more decorative type  
18 landscaping that would to in along the front,  
19 along Doak.

20 HEARING OFFICER VALKOSKY: Okay, thank  
21 you. Mr. Westerfield?

22 MR. WESTERFIELD: Mr. Priestley, I just  
23 have a couple of questions if I may. Can I just  
24 direct you to your testimony on page 93. And  
25 under the section entitled "cumulative impacts"

1 I'd ask you to look at that second paragraph.

2 And in that paragraph there is a  
3 sentence that begins with "once development  
4 occurs. . ." Do you see it?

5 MR. PRIESTLEY: Yes.

6 MR. WESTERFIELD: Could you read that  
7 aloud for us please?

8 MR. PRIESTLEY: I'm wondering, do you  
9 want me to read the whole paragraph so the  
10 sentence can be understood in its context?

11 MR. WESTERFIELD: If you wish.

12 MR. PRIESTLEY: "As discussed above, in  
13 an SPPE section 8.4 land use, the land adjacent to  
14 and west of the project site is designated and  
15 zoned for industrial and residential development  
16 according to the general plan and zoning  
17 ordinance."

18 "Once development occurs, that is  
19 development of this land that is to the west of  
20 the site, the views of the project site from the  
21 KOP1 residence would be further screened, thus  
22 eliminating the less-than-significant impact from  
23 the project, further reducing the project  
24 contribution to cumulative impacts on the  
25 landscape."

1           MR. WESTERFIELD: Okay. In reaching  
2 that conclusion did you analyze any specific  
3 projects?

4           MR. PRIESTLEY: Yes we did. You may be  
5 familiar with the simulations that have been  
6 submitted as a part of the record of two projects?  
7 Located to the west of the project site? And are  
8 you familiar with the simulations?

9           MR. WESTERFIELD: I'm really not in a  
10 position to testify, sir. If you'd like to refer  
11 me to certain simulations, that's fine, but I  
12 choose to ask you questions --

13          MR. PRIESTLEY: Okay, well actually  
14 there are three projects that are underway to the  
15 immediate west of the project site. One is an  
16 expansion to the Jim Aartman Trucking operations.  
17 I was out at the site this morning and it was  
18 clear in fact that grading has already appeared at  
19 the site.

20          That would be at the, if you can  
21 imagine, the western edge of the site, but kind of  
22 the northern end. Then next to that -- let me  
23 refer to the map so I can be rather specific --  
24 next to that is the proposed Al Waggoner project.  
25 And next to that would be the Arrow Asphalt



1 project.

2 MR. WESTERFIELD: Okay. So are those  
3 the total number of developments that you are  
4 referring to in your sentence that begins with  
5 "once development occurs?"

6 MR. PRIESTLEY: Those certainly are the  
7 other projects that are in fact in the works right  
8 at the moment, and provide the strongest basis for  
9 that conclusion. Plans also show further  
10 industrial development to the west. And then in  
11 the strip right along Vera there is a planned  
12 residential use.

13 I am not aware that there are projects  
14 in the works at the moment for that property, but  
15 we do know that these projects just west of the  
16 site, in fact, are in the works at present.

17 MR. WESTERFIELD: Well, let me ask the  
18 question again, because I don't think you answered  
19 my question. Are those three projects the total  
20 number of projects you were referring to when you  
21 wrote the sentence "once development occurs?"

22 MR. PRIESTLEY: Pardon? I want to make  
23 sure, I want to get this.

24 MR. WESTERFIELD: Are those three  
25 projects the total number of projects you were

1 referring to when you wrote the sentence "once  
2 development occurs?"

3 MR. PRIESTLEY: Yes they were.

4 MR. WESTERFIELD: Okay. Now did you  
5 analyze these projects in combination with this  
6 project on the views of residents to the west of  
7 the main site of the trees at the Fox River Paper  
8 Company?

9 MR. PRIESTLEY: We analyzed the  
10 implications of these projects on the overall  
11 character and quality of views from this corridor  
12 along Vera Avenue. The trees at Fox River were  
13 one element of that analysis, but they weren't the  
14 sum total of that analysis.

15 MR. WESTERFIELD: Okay. So again my  
16 question is did you analyze these projects in  
17 combination with the Applicant's project, on the  
18 views of residents to the west of the MEGS site?

19 MR. PRIESTLEY: Oh, yes we did. Again I  
20 guess we should refer you to the simulations that  
21 have been on file. There was a rather elaborate  
22 analysis of this.

23 MR. WESTERFIELD: Okay, so what you're  
24 saying then is the effect of all this development,  
25 the cumulative impact of all this development is

1 essentially to screen the views of reference to  
2 the west of the site of the trees at the Fox River  
3 Paper Company? And therefore it's not a  
4 cumulative impact?

5 MR. PRIESTLEY: No. What we are saying  
6 is that the presence of our facility, of the  
7 proposed facility and of these other projects, and  
8 of the landscaping that is going to be associated  
9 with those projects.

10 And we agree with staff that, with the  
11 presence of screening trees along the western edge  
12 of the proposed project, that the cumulative  
13 impact of all of these things on this view would  
14 be less than significant.

15 MR. WESTERFIELD: All right. Then if I  
16 understand you, you're saying that all these  
17 projects, once they're built, amount to a less  
18 than significant cumulative impact, because these  
19 new development projects would essentially add new  
20 buildings that further screen the views of these  
21 residents to the west of the MEGS project?

22 MR. PRIESTLEY: I think that there are  
23 several elements, there are like two elements to  
24 your question there. One has to do with the  
25 impact of our project by itself, and the other has

1 to do with cumulative impacts.

2 MR. WESTERFIELD: I'm talking about  
3 cumulative impact.

4 MR. PRIESTLEY: Okay.

5 MR. WESTERFIELD: And I'm asking about  
6 the cumulative impact of these three new projects  
7 along with the MEGS project. And the question is,  
8 you know, I'm trying to understand why you think  
9 it's no cumulative impact when you re apparently  
10 saying its screening, it's further screening  
11 certain views.

12 And I don't understand why a bunch of  
13 new buildings don't amount to a cumulative impact  
14 because they are blocking everybody's view?

15 MR. PRIESTLEY: Well, I don't really  
16 understand why you're seeing this is as a  
17 contradiction, because in fact yes, these new  
18 buildings will partially screen the views toward  
19 the proposed power plant project. And the  
20 presence of these views cumulatively will in some  
21 way change this view.

22 But whether or not the change to this  
23 view is a significant impact under the criteria  
24 that CEQA sets out is an entirely different  
25 question. You can have screening going on in a

1 view and not have a significant impact.

2 MR. WESTERFIELD: Okay. And why under  
3 CEQA, in your view, is it not a significant  
4 impact?

5 MR. PRIESTLEY: Given the existing  
6 character and quality of this view, we agree with  
7 staff that the rating of this view is moderately  
8 low. In terms of landscapes, if you look at all  
9 the landscapes that are out there, and you kind of  
10 rate them in comparison to each other, I mean,  
11 this landscape isn't ugly by any means, but you  
12 know, it's kind of a garden variety landscape.

13 It's really not all that special. And  
14 you are making some modifications to it.  
15 Modifications -- this landscape has not been given  
16 special protection in local plans. In fact, it  
17 has been designated as an area for heavy  
18 industrial development. So in the whole scheme of  
19 things this modification to this particular  
20 landscape is not a significant visual impact.

21 MR. WESTERFIELD: Okay. So in other  
22 words, you're already saying it's very industrial  
23 to start with. You can say it's not very scenic  
24 in quality. So adding --

25 COMMISSIONER PERNELL: Well, I'm saying

1 it's a landscape that is of, you know, very modest  
2 in quality. It's an area for which a decision has  
3 already been made for, the community has already  
4 decided that it wants to convert this to  
5 industrial uses. So, given the overall context of  
6 things my professional judgment is that this is a  
7 less than significant cumulative impact.

8 MR. WESTERFIELD: Okay, that's fine, no  
9 more questions.

10 HEARING OFFICER VALKOSKY: Mr. Sarvey?

11 MR. SARVEY: Yes. Are visual  
12 impressions subject to personal interpretation,  
13 Dr. Priestley?

14 MR. PRIESTLEY: Yes, they are. But at  
15 the same time, people in the landscape  
16 architecture discipline, in order to deal with  
17 these kinds of issues, a systematic procedure has  
18 been developed for evaluating which attempts to  
19 get at some kind of commonality of view in a way  
20 that, you know, works within the framework set out  
21 by CEQA to provide, you know, as clear and open an  
22 evaluation as possible.

23 MR. SARVEY: Calling your attention to  
24 visual resources figure 2A, it's in the final  
25 assessment.

1           MR. PRIESTLEY: What I have in front of  
2 me is figure 8.11-7C, is that the same as --

3           MR. SARVEY: It's COP 1, it's the  
4 existing view of the MEGS site, visual resources  
5 figure 2A.

6           MR. PRIESTLEY: Okay. I have 2A in  
7 front of me.

8           MR. SARVEY: Okay. Would you describe  
9 that as a garden variety view, not a very special  
10 view? Is that correct?

11          MR. PRIESTLEY: In the whole scheme of  
12 things, yes.

13          MR. SARVEY: Do you think the view  
14 depicted in visual resources figure 2 is special  
15 to the residents who have that view, unobstructed  
16 at this time?

17          MR. PRIESTLEY: It may be.

18          MR. SARVEY: Have you ever seen a power  
19 plant that you considered a significant impact to  
20 visual resources? Can you name one?

21          MR. PRIESTLEY: Yes I have. Or at least  
22 I have seen some proposed power plants without  
23 appropriate mitigation, that I have considered to  
24 be potentially significant in terms of their  
25 visual impacts.

1           MR. SARVEY: And did you testify to that  
2 matter, that they were significant impacts to  
3 visual resources?

4           MR. PRIESTLEY: Without mitigation, yes.  
5 I mean, I'm on record.

6           MR. SARVEY: Okay. Would you say that  
7 the project will only contribute to the current  
8 and future cumulative impacts to visual resources  
9 of this view?

10          MR. PRIESTLEY: Are you talking about  
11 significant impacts?

12          MR. SARVEY: Yes.

13          MR. PRIESTLEY: If you're talking about  
14 significant impacts, I would say no. Of course,  
15 you're going to be able to see this power plant,  
16 and it is going to represent some kind of a change  
17 in this landscape, but whether or not it is a  
18 significant impact under CEQA is really, you know,  
19 a different question.

20                 And my analysis is that it does not rise  
21 to the level of a significant impact.

22          MR. SARVEY: Earlier you said that you  
23 thought that perhaps this view in figure 2 was  
24 special to the resident's to have the unobstructed  
25 view. Do you still maintain that?



1           MR. PRIESTLEY: I indicated that it  
2 could be.

3           MR. SARVEY: Okay. Thank you, that's  
4 all.

5           HEARING OFFICER VALKOSKY: Redirect, Ms.  
6 Warren?

7           MS. WARREN: I'd just like to clarify a  
8 reference. You referred in your testimony to  
9 simulations that had been included in the  
10 exhibits?

11          MR. PRIESTLEY: Yes.

12          MS. WARREN: I'd like to represent to  
13 you and see if you'd agree that the references to  
14 exhibit 5, which would be a data response set 1,  
15 numbers 83 through 91. Is that correct?

16          MR. PRIESTLEY: Yes that's correct.

17          MS. WARREN: Just so there's a reference  
18 to where those simulations would be located.

19          HEARING OFFICER VALKOSKY: is that it?

20          MS. WARREN: Yes.

21          HEARING OFFICER VALKOSKY: Anything  
22 further for Dr. Priestley?

23          MR. WESTERFIELD: Nothing further.

24          MR. SARVEY: Nothing further.

25          HEARING OFFICER VALKOSKY: With that,

1 are you going to move your exhibits?

2 MS. WARREN: Yes, I'd like to move these  
3 exhibits.

4 HEARING OFFICER VALKOSKY: Is there any  
5 objection?

6 MR. WESTERFIELD: No objection.

7 MR. SARVEY: No objection.

8 HEARING OFFICER VALKOSKY: Applicant's  
9 exhibits pertinent to visual resources are hereby  
10 admitted. Can we go off the record for a second?  
11 (Off the record.)

12 HEARING OFFICER VALKOSKY: Back on the  
13 record. All right, Mr. Westerfield, proceed with  
14 your witness.

15 MR. WESTERFIELD: Yes, I'd like to call  
16 Eric Knight.

17 HEARING OFFICER VALKOSKY: Swear the  
18 witness please.  
19 Whereupon,

20 ERIC KNIGHT  
21 was called as a witness herein, and after first  
22 having been duly sworn, was examined and testified  
23 as follows:

24 MR. WESTERFIELD: As we had mentioned  
25 off the record, we are content to submit Mr.

1 Knight's testimony that's a part of our final  
2 initial study by declaration. And ask that it be  
3 moved into evidence. And then tender him for  
4 cross-examination by any of the other parties.

5 HEARING OFFICER VALKOSKY: Parties  
6 stipulate to Mr. Knight's qualifications?

7 MR. SARVEY: Yes.

8 HEARING OFFICER VALKOSKY: Ms. Warren,  
9 do you stipulate to his qualifications?

10 MS. WARREN: Yes.

11 HEARING OFFICER VALKOSKY: Okay, fine.  
12 Is there any objection in admitting exhibit 22?

13 MR. SARVEY: None.

14 MS. WARREN: Not from us.

15 HEARING OFFICER VALKOSKY: Okay. We'll  
16 admit exhibit 22. the witness is tendered for  
17 cross-examination. Ms. Warren?

18 MS. WARREN: We have nothing.

19 HEARING OFFICER VALKOSKY: Mr. Sarvey?

20 MR. SARVEY: Yes. In your testimony  
21 you've determined that the project will have a  
22 significance to visual resources, is that correct,  
23 without mitigation?

24 MR. KNIGHT: The project, in combination  
25 with other projects that are proposed there, yes.

1           MR. SARVEY: Okay. Drawing your  
2 attention to figure 2F, it's a simulation of the  
3 project after five years, it's the final initial  
4 study? Is it possible that, due to heat, drought,  
5 conditions, wind, whatever circumstances, that  
6 this landscaping will not grow to the simulated  
7 height?

8           MR. KNIGHT: The trees that are depicted  
9 in that simulation are coast redwoods. Coast  
10 redwoods do require an ample amount of water. But  
11 in talking with our botanist at the Energy  
12 Commission, when I initially brought up coast  
13 redwoods to him, he didn't see any reason why they  
14 wouldn't grow at that location, given that they  
15 were variegated.

16          MR. SARVEY: If these trees don't grow  
17 at these locations, are there any condition  
18 exemptions that you've included to ensure that the  
19 screening reaches the level that you expect it to?

20          MR. KNIGHT: Initially there was a  
21 condition exemption that was written that had a  
22 performance measure that was in there about  
23 screening the project to a substantial degree  
24 within the shortest feasible time, and using a  
25 fast-growing evergreen species.

1           How that's achieved, with what  
2   particular species, was left kind of unsaid.  
3   There was discussions at the workshop that the  
4   Applicant really didn't want to have to come to  
5   the Energy Commission for approval of a  
6   landscaping plan, and also to the city of Ripon,  
7   since this is an SPPE.

8           So, instead of a condition of exemption,  
9   the Applicant proposed the mitigation, proposed  
10   that they will use a fast-growing evergreen  
11   species to meet that performance objective, and  
12   then there were discussions as well with the city  
13   Planning Director at the city of Ripon that they  
14   would ensure that that measure is met.

15           MR. SARVEY: But there's no Energy  
16   Commission condition that will ensure that that  
17   condition is met, is that correct?

18           MR. KNIGHT: No there is not.

19           MR. SARVEY: Okay, thank you. In your  
20   opinion, does the landscaping depicted in figure  
21   2F fully mitigate this project?

22           MR. KNIGHT: I believe it is,  
23   considering the impact that I identified at that  
24   location. The impact was, for these residents at  
25   KFU 1, which is Vera Avenue. Right not they have

1 an unobstructed view of the grove of redwoods that  
2 are growing at the Fox River Paper Company site.

3 They also have views which are to the  
4 right of the photograph and then extending beyond  
5 the photograph, of riparian vegetation that's  
6 growing along the Stanislaus River. So there is  
7 natural elements to the view, not just industrial  
8 uses.

9 It was my opinion that the power plant  
10 alone, it would block a portion of those redwood  
11 trees. Which is a scenic, really the only notable  
12 scenic quality view, but it wouldn't block those  
13 trees to a substantial degree. When you start  
14 adding the other projects that are reasonably  
15 foreseeable in the area, and as Mr. Priestley  
16 pointed out one of them has already started  
17 construction, I believe that on a cumulative basis  
18 that impact was significant.

19 Nearly all those trees were blocked out  
20 from view of the coast redwoods. Some of those  
21 projects are going to start blocking riparian  
22 vegetation as well, but not this project. So,  
23 because what's being blocked, the impact is view  
24 blockage, blockage of the trees, which have a  
25 higher visual quality than the power plant itself.

1           The trees now, if you go back and look  
2   -- I think it's visual resources figure 2A -- they  
3   are about as tall as these trees that are shown in  
4   2F. So really, my goal, at least in the short  
5   term, would be to achieve a height that's  
6   comparable to what those trees are now.

7           So basically put trees back into that  
8   view. They're being blocked away by the power  
9   plant, they're not going to be seen within a  
10   short-term time frame of say like five years. I  
11   believe it's feasible to achieve that level of  
12   growth.

13           MR. SARVEY: So you feel that figure 2F,  
14   which depicts the project after five years, does  
15   fully mitigate the impacts of the power plant?

16           MR. KNIGHT: I believe it will. And I  
17   think, what's not shown in that figure, is those  
18   trees on the Fox River Paper Company will continue  
19   to grow. They're shown stagnant, and we didn't  
20   simulate their growth as well.

21           So I think essentially you get this  
22   effect where the power plant would be somewhat  
23   sandwiched between trees on the site and trees  
24   behind it. And essentially what you have now, and  
25   in the longer range term, with those trees behind

1 it continuing to grow, these trees continue to  
2 grow, it will nearly screen out that entire plant.

3 Coast redwoods grow very tall. I think  
4 what you'd essentially have then is what you have  
5 now on that site. If you look in 2A you can see a  
6 few puffs of white smoke, or steam plumes, coming  
7 up from two industrial plants that are inside that  
8 grove of redwoods. So to answer your question,  
9 yes I believe it will.

10 MR. SARVEY: Your further depiction of  
11 your 20 year landscaping, that would be 2C and 2D.  
12 Are those incorrect, because they're different  
13 trees there?

14 MR. KNIGHT: Yes, those were the  
15 simulations that the Applicant prepared, so no,  
16 those aren't depicting the proposed landscaping at  
17 the site. That landscaping that's shown in those  
18 pictures is actually landscaping at those future  
19 project sites, which is somewhat speculative,  
20 because when this was done no landscaping plans  
21 were unknown to exist at the time.

22 Those are London plain trees, they're  
23 deciduous trees, they're not evergreens.

24 MR. SARVEY: Okay. thank you.

25 HEARING OFFICER VALKOSKY: Any redirect?



1 Mr. Westerfield?

2 MR. WESTERFIELD: No redirect, thank  
3 you.

4 HEARING OFFICER VALKOSKY: Did I hear  
5 you correctly that the city of Ripon would  
6 actually be enforcing the performance goals for  
7 the tree screening?

8 MR. KNIGHT: Yes. The Applicant will  
9 have to go before the city of Ripon to obtain a  
10 major site plan permit, and in that process they  
11 will be looking at landscaping requirements to  
12 meet the zoning code.

13 They would also, through that process  
14 they would establish mitigation monitoring report  
15 plans to ensure that any mitigation measures that  
16 are imposed on the project are actually met and  
17 that's established in their zoning code.

18 HEARING OFFICER VALKOSKY: Okay. And  
19 how can we be assured that the mitigation that  
20 staff proposes as depicted in the various figures,  
21 is in fact the one adopted by the city of Ripon?

22 MR. KNIGHT: Well, I suppose, the Energy  
23 Commission -- there's not a condition in there  
24 that we're going to get a copy of it, so I don't  
25 know if we have 100 percent assurance that it will

1     happen.

2                   But the discussion that took place at  
3     the staff workshop, and the Applicant has modified  
4     the project, they will submit landscaping plans to  
5     the city of Ripon with the objective of meeting the  
6     performance goals.

7                   And we had discussions with the planning  
8     director that said that he understood what the  
9     impact was, and that he was sure that they would  
10    be met. And the planning director is ultimately  
11    the one responsible for making sure that the  
12    mitigation monitoring plan is enforced, and the  
13    mitigation achieved.

14                  HEARING OFFICER VALKOSKY: I'd like to  
15    jump back to Applicant's witness. Dr. Priestley,  
16    do you agree with the statement that staff's  
17    witness just made, in that Applicant will in fact  
18    be submitting landscaping plans to the city of  
19    Ripon that will be consistent with the performance  
20    goals in terms of visual screening?

21                  MS. WARREN: Mr. Valkosky, let me offer  
22    Susan Strachan to answer that issue. She has had  
23    direct conversations with the people over at the  
24    city, and so can address that most directly, if  
25    that's acceptable?

1 Whereupon,

2 SUSAN STRACHAN

3 was called as a witness herein, and after first  
4 having been duly sworn, was examined and testified  
5 as follows:

6 MS. WARREN: Can you please state and  
7 spell your name for the record?

8 MS. STRACHAN: My name is Susan  
9 Strachan. Susan is spelled S-u-s-a-n, Strachan is  
10 S-t-r-a-c-h-a-n.

11 MS. WARREN: And could you please  
12 describe your position with respect to the  
13 project?

14 MS. STRACHAN: I'm an independent  
15 consultant to the Modesto Irrigation District,  
16 serving as one of the environmental project  
17 managers.

18 MS. WARREN: And have you had occasion  
19 to have contact with members from the city of  
20 Ripon with regard to the landscaping proposed at  
21 the MEG site?

22 MS. STRACHAN: Yes, I have. I've had  
23 several conversations with them.

24 MS. WARREN: Could you please relate to  
25 us those conversations?

1 MS. STRACHAN: Conversations, as I  
2 mentioned, several of them. Most recently dealing  
3 with the staff's final initial study and the  
4 requirement that the project go through the site  
5 review process.

6 And it is a process through the planning  
7 commission, where Modesto Irrigation District will  
8 be required to submit a landscape plan, irrigation  
9 plan. it deals with painting, lighting, issues  
10 that are spelled out in our mitigation for the  
11 project. And they will have the opportunity to  
12 review those plans at that time.

13 There's also, as Mr. Knight mentioned, a  
14 mitigation program which is what the city uses and  
15 develops to ensure that the project meets the  
16 mitigation requirements that are approved during  
17 the site review permit process.

18 MS. WARREN: Have you had an opportunity  
19 to discuss the proposed landscaping with any  
20 members from the city?

21 MS. STRACHAN: I discussed with Ernie  
22 Tyhurst the tree species that were mentioned, the  
23 cicerone and the redwoods. Originally the city  
24 was not sure about the redwoods because they do  
25 take a lot of water.

1           They then recently called and said that  
2   they were comfortable with the use of redwoods  
3   because the project will be using non-potable  
4   water and that the trees would be irrigated with  
5   non-potable water. Otherwise the city does have a  
6   requirement for drought-tolerant landscaping.

7           MS. WARREN: So is it your opinion that  
8   the city is in concurrence with the proposed  
9   landscaping as it was simulated?

10          MS. STRACHAN: That's my understanding.

11          MS. WARREN: No further questions.

12          HEARING OFFICER VALKOSKY: Is it also  
13   your opinion that the landscaping submitted by  
14   Applicant will comply with, will meet the  
15   performance standards to which staff was  
16   referring?

17          MS. STRACHAN: That's my understanding.

18          HEARING OFFICER VALKOSKY: Okay, thank  
19   you. Mr. Westerfield, anything?

20          MR. WESTERFIELD: No further questions.

21          HEARING OFFICER VALKOSKY: Mr. Sarvey?

22          MR. SARVEY: Yes. This project was not  
23   submitted to the Energy Commission. What would  
24   the city of Ripon require as visual screening for  
25   this project?

1 MS. STRACHAN: I can't answer that  
2 question.

3 MR. SARVEY: Okay. And you've spoken  
4 with the members of the planning department about  
5 the visual screening on this project?

6 MS. STRACHAN: I spoke specifically with  
7 Mr. Ernie Tyhurst, who's the planning director for  
8 the city.

9 MR. SARVEY: The planing director. Now  
10 does the planning director have the ultimate  
11 authority over this project or is it the city  
12 council that would decide what was absolutely  
13 necessary should this be challenged?

14 MS. STRACHAN: I don't know the answer  
15 to that.

16 MR. SARVEY: Have you spoken with any  
17 members of the city council regarding the  
18 screening for this project?

19 MS. STRACHAN: No, I have not.

20 MR. SARVEY: Thank you. That's all.

21 HEARING OFFICER VALKOSKY: Any further  
22 questions? Any redirect?

23 MS. WARREN: None, thank you.

24 HEARING OFFICER VALKOSKY: Ma'am, come  
25 on up.

1 MS. KAEFER: I just wanted to say,  
2 regarding Mr. Tyhurst and the city of Ripon, and  
3 I'm hoping that this -- because I have been told  
4 by them when we've tried to enforce anything that  
5 the only thing that they do enforce is  
6 construction noise, and that it's current things  
7 now, that they didn't enforce anything before.

8 So anything before now is grandfathered  
9 so therefore they don't do anything. My next door  
10 neighbor, who is the closest person to this plant,  
11 who isn't here now, has a landscaping issue with  
12 the trucking yard, which is between us and their  
13 plant.

14 For the three years that I've lived  
15 there, every year we've called the fire  
16 department, who has had to notice the trucking  
17 yard. They have noticed them -- or at least  
18 they've told us that they've noticed them -- they  
19 give them 14 days, and then they notice them  
20 again, and then they have like 21 days, and then  
21 they notice them again.

22 And they only are doing this if we  
23 continue calling, and then they come out and they  
24 mow these weeds that are up to here, so now  
25 they're here, they're still a fire hazard. I've

1 spoken to the fire chief, because what they say is  
2 that the city has nothing to do with landscaping  
3 or issues, only if its a fire hazard, and then you  
4 call the fire department, and they are a separate  
5 entity from the city. They're completely  
6 separate.

7 And from the chief's words to me is  
8 basically what happens is in the notice time frame  
9 that they have to give them, by the time they're  
10 done noticing winter has come, and then stuff  
11 starts turning green and it's no longer an issue.  
12 And therefore again we get back to the city does  
13 not enforce anything.

14 I hope that they will enforce this, but  
15 Ernie Tyhurst is a person who does not return my  
16 calls, has flat told me on noise issues that there  
17 is no noise ordinance. So I don't know that  
18 landscaping is going to be any different.

19 HEARING OFFICER VALKOSKY: Okay. Thank  
20 you. Final question, Mr. Knight, correct me if  
21 I'm wrong, but your draft initial study you had  
22 several conditions of exemption to ensure  
23 compliance with your visual screening criteria, is  
24 that correct?

25 MR. KNIGHT: Yes, I believe there were



1 two conditions. One that was the color of project  
2 structures and low glare structures, and the other  
3 was the landscaping screening.

4 HEARING OFFICER VALKOSKY: Okay, and the  
5 reason those were deleted in the final initial  
6 study?

7 MR. KNIGHT: Being that this is an SPPE,  
8 which is exempt from our process, we've been  
9 trying to minimize the number of conditions. I  
10 felt that if the Applicant amended their project  
11 to include both a requirement for low glare, low  
12 contrasting structures, as well as landscape  
13 screening, then the project as proposed wouldn't  
14 present a significant impact to the environment,  
15 and therefore no additional mitigation proposed by  
16 staff would be needed.

17 HEARING OFFICER VALKOSKY: Okay. Thank  
18 you for that clarification. Anything further from  
19 anyone on the topic of visual resources? Seeing  
20 none -- no public comment? Nothing further, we'll  
21 close the topic of visual resources. And at this  
22 time I'd like to take a dinner recess. We'll take  
23 a 30 minute dinner recess until 6:20.

24 (Off the record.)

25 HEARING OFFICER VALKOSKY: Back on the

1 record. Off the record we did discuss the order  
2 of the remaining agenda items. And by mutual  
3 agreement we will proceed with noise followed by  
4 air quality as the final topic. Ms. Warren, your  
5 witness.

6 MS. WARREN: Can I have my witness sworn  
7 in?

8 Whereupon,

9 MARK BASTASCH  
10 was called as a witness herein, and after first  
11 having been duly sworn, was examined and testified  
12 as follows:

13 MS. WARREN: Will you please state and  
14 spell your name for the record?

15 MR. BASTASCH: Mark Bastasch, M-a-r-k B  
16 as in boy a-s-t-a-s-c-h.

17 MS. WARREN: And would you please state  
18 your job title and your role with regard to the  
19 project?

20 MR. BASTASCH: I'm an engineer with  
21 CH2MHill, and I prepared the noise portion of the  
22 application.

23 MS. WARREN: And for reference do you  
24 know what page that would begin on?

25 MR. BASTASCH: Section 8.5.

1 MS. WARREN: Of the SPPE, and on the  
2 testimony I believe it's page 67 of the testimony.

3 MR. BASTASCH: That's correct.

4 MS. WARREN: Does that testimony contain  
5 a statement of your qualifications?

6 MR. BASTASCH: It does.

7 MS. WARREN: Can you please provide a  
8 brief overview of your education and experience as  
9 it pertains to your testimony today?

10 MR. BASTASCH: Sure. I've got a  
11 Bachelor's of Science in Environmental Engineering  
12 from Cal Poly San Luis Obispo, and a Masters from  
13 Rice University in Houston, Texas. I'm a  
14 professional Acoustical Engineer in the state of  
15 Oregon, and I've prepared numerous assessments for  
16 other projects that have been before the  
17 Commission.

18 MS. WARREN: Thank you. Do you have any  
19 additions, corrections, or clarifications to your  
20 filed testimony?

21 MR. BASTASCH: No.

22 MS. WARREN: Your testimony incorporates  
23 a number of exhibits. Can you please identify  
24 those for us?

25 MR. BASTASCH: Exhibit 1, section 8.5,

1 and Appendix 8.5B and 8.5C of the SPPE  
2 application; exhibit 2 of the SPPE, supplement A;  
3 exhibit 5, data response set 1A, numbers 50 and  
4 51; and exhibit 15, the draft initial study  
5 comments, set 1.

6 MS. WARREN: To the best of your  
7 knowledge are all the facts contained in your  
8 testimony, including the reference documents, true  
9 and correct?

10 MR. BASTASCH: Yes.

11 MS. WARREN: And do the opinions  
12 contained in your testimony represent your best  
13 professional judgment?

14 MR. BASTASCH: Yes.

15 MS. WARREN: Do you adopt such testimony  
16 as your testimony in this proceeding?

17 MR. BASTASCH: Yes.

18 MS. WARREN: Can you please summarize  
19 your testimony for us?

20 MR. BASTASCH: Certainly. The project  
21 site is located in the north corner of Doak  
22 Boulevard and South Stockton Avenue, extension of  
23 the city of Ripon. The general area is zoned for  
24 and surrounded by industrial uses, such as the Fox  
25 River Paper Company, which includes a cogeneration

1 facility; Nulaid Foods; a trucking facility; a  
2 grain terminal; and the city of Ripon wastewater  
3 treatment plant.

4 Sources of environmental noise in the  
5 vicinity of the project site include vehicular  
6 traffic on state route 99, auto and heavy truck  
7 traffic on local roads, train movements on the  
8 adjacent tracks -- which are adjacent to state  
9 route 99 --, neighboring light and heavy  
10 industrial sources mentioned above, and occasional  
11 general aviation aircraft overflights.

12 Existing noise levels were measured in a  
13 25-hour survey, as required by the CEC, at two  
14 locations designated as A and B, which are  
15 approximate to the proposed location. The  
16 distances to the monitoring locations were  
17 presented from the approximate center of the MEGS  
18 facility.

19 The nearest sensitive receptor is  
20 approximately 1,000 feet from the center of the  
21 facility. Noise impacts were analyzed at the  
22 closest residence north. in addition to  
23 monitoring impacts at monitoring locations A and  
24 B, noise impacts were analyzed at the closest  
25 residence north of the project site, identified as

1 R.

2 Noise monitoring was not conducted at  
3 location R because it was closer to the existing  
4 noise sources than monitoring location A, and the  
5 existing ambient levels would have been elevated  
6 by such sources.

7 The noise survey showed that the levels  
8 at A ranged from 48 to 49 decibels. The LDN  
9 descriptor was approximately 58 decibels. A noise  
10 model for the proposed facility was developed  
11 using source input levels derived from  
12 manufacturers data and field surveys of similar  
13 equipment.

14 The analysis showed that the predicted  
15 sound levels at all residential locations are  
16 below the 65 DBA LDN threshold established by the  
17 city. The predicted levels at location A were 57  
18 DBA and at location R 55 DBA.

19 The project is not anticipated to have  
20 audible tones. Certain sources within the plant  
21 may generate the tones, but it is MID's intention  
22 to anticipate the potential for audible tones in  
23 the design and specifications of plant equipment,  
24 and take necessary steps to prevent sources from  
25 emitting the tones that might be disturbing at the

1 nearest receptors.

2 Construction noise associated with the  
3 MEGS facility is expected to be typical of other  
4 comparable power plants in terms of schedule,  
5 equipment used, and other types of activities.  
6 The noise level will vary during the construction  
7 period depending on the construction phase.

8 At 1,000 feet, the approximate distance  
9 to the nearest residential locations, average  
10 noise levels during construction activities are  
11 projected to be between 52 DBA and 63 DBA.

12 Construction activities will be  
13 conducted in accordance with the city of Ripon's  
14 requirements and will be of limited duration. And  
15 according to the CEC's finding on numerous similar  
16 projects, construction noise will not result in a  
17 significant impact.

18 MS. WARREN: Have you reviewed the  
19 errata to staff's testimony filed on August 29th?

20 MR. BASTASCH: I have.

21 MS. WARREN: Can you provide your  
22 understanding of that errata, as it applies to  
23 noise?

24 MR. BASTASCH: Certainly. The errata  
25 presented monitoring data that was collected at

1 location R, and it substantiates our presumption  
2 that location R would have an elevated background  
3 level compared to location A, and that our  
4 analysis, based on noise levels measured at A, was  
5 conservative.

6 MS. WARREN: Would staff's proposed  
7 conditions of exemption, in your opinion, would  
8 the plant create a significant adverse noise  
9 impact?

10 MR. BASTASCH: No.

11 MS. WARREN: And with staff's proposed  
12 conditions of exemptions would this project comply  
13 with all LORS?

14 MR. BASTASCH: Yes.

15 MS. WARREN: Do you disagree with  
16 staff's conditions of exemption in this area?

17 MR. BASTASCH: No.

18 MS. WARREN: And just to clarify, your  
19 response to that question was taking into  
20 consideration the errata that was filed on this  
21 issue?

22 MR. BASTASCH: Correct.

23 MS. WARREN: That's all my questions.

24 HEARING OFFICER VALKOSKY: Thank you. I  
25 notice in your testimony you suggest a change to



1 noise 1, which staff has apparently incorporated  
2 into their supplemental testimony, is that  
3 correct?

4 MR. BASTASCH: Correct.

5 HEARING OFFICER VALKOSKY: Could you  
6 just explain, for my own understanding, why you  
7 view it preferable to extrapolate the noise level  
8 rather than taking an actual measurement at a  
9 given location?

10 MR. BASTASCH: Certainly. In a project  
11 location such as this, where we've got numerous  
12 existing noise sources, having the ability to  
13 measure closer to the plant, and therefore  
14 determine the actual plant noise level, and then  
15 extrapolate that level out, ensures that we are  
16 holding the plants to the design level, rather  
17 than penalizing the plant from sources which are  
18 not emanating from the plant.

19 It enables us to distinguish the plant  
20 level from the other sources in the area.

21 HEARING OFFICER VALKOSKY: In your  
22 experience, how accurate, plus or minus how many  
23 percent, is that mathematical extraction which  
24 will then ensue extrapolations?

25 MR. BASTASCH: I would say it would be

1 less than a generally noticeable difference.

2 HEARING OFFICER VALKOSKY: Okay. Do you  
3 have any threshold for what level of increase  
4 results in a significant impact? In other words,  
5 is it five decibels, ten decibels, 15, whatever?

6 MR. BASTASCH: Staff has really set the  
7 threshold in staff's interpretation of CEQA is  
8 that increase of less than five decibels are  
9 clearly not significant, and increases between  
10 five and ten decibels may be significant. And  
11 then increases of ten decibels and above would  
12 most likely be significant.

13 HEARING OFFICER VALKOSKY: Do you agree  
14 with that?

15 MR. BASTASCH: I think that has  
16 relevance in some settings. I don't know that it  
17 has relevance in all settings.

18 HEARING OFFICER VALKOSKY: Could you  
19 explain that a little further please?

20 MR. BASTASCH: I think that there may be  
21 projects where noise increase above ten decibels  
22 would not necessarily result in a significant  
23 adverse impact. And there may be -- I'll just  
24 leave it at that.

25 HEARING OFFICER VALKOSKY: From your

1 experience in other projects, is the five and ten  
2 decibel limits used by staff generally accepted,  
3 is it a common use of those levels?

4 MR. BASTASCH: Staff used the L90  
5 descriptor as the basis for those levels, which is  
6 a conservative descriptor, to add the increment of  
7 five or ten decibels. Five and ten decibels are  
8 used -- well, ten decibels and above is used by  
9 transportation agencies, but they use the LEQ  
10 descriptor.

11 The federal transportation, or the  
12 Federal Rail Administration will allow ten  
13 decibels or greater than ten decibels in certain  
14 situations based on the LDN descriptor, which is a  
15 24 hour average. So the five and ten numbers are  
16 out there in the literature, and in regulatory  
17 guidance by other federal agencies, but they're  
18 not necessarily based on the L90 descriptor.

19 And the L90 descriptor is the sound  
20 level that is exceeded 90 percent of the time. So  
21 it represents the quietest portion of existing  
22 conditions.

23 HEARING OFFICER VALKOSKY: Okay. And  
24 did you say that the L90 used by staff is in  
25 effect more conservative than these other

1 regulatory --

2 MR. BASTASCH: Correct. That's what I'm  
3 getting at. It's a more conservative approach.

4 HEARING OFFICER VALKOSKY: Okay. Thank  
5 you. Mr. Westerfield?

6 MR. WESTERFIELD: Mr. Bastasch, just a  
7 couple of questions. Could you characterize the  
8 noise levels, I guess in qualitative terms, at  
9 point A?

10 MR. BASTASCH: The project noise level  
11 at --

12 MR. WESTERFIELD: No, I'm sorry, the  
13 ambient noise level without the project at point  
14 A?

15 MR. BASTASCH: Certainly. I would refer  
16 to a table in the SPPE application. And that is  
17 table 8.5-2. And that, the level of high 40's to  
18 50 is consistent with that of a private office  
19 building, or light traffic at a hundred feet.

20 MR. WESTERFIELD: Right. I wanted to  
21 ask you in qualitative terms. So let me give you  
22 some examples of what might be a qualitative term.  
23 Is it noisy? Is it moderately noisy? Is it  
24 quiet? Is it very, very noisy? Can you describe  
25 the level at point A in those kinds of qualitative

1 terms?

2 MR. BASTASCH: I'd be stating my  
3 opinion, just to be clear -- and I don't think  
4 you're asking for anything else. Because noise is  
5 subjective. I would consider that moderately  
6 quiet. I wouldn't consider it extremely quiet.  
7 I'd consider it louder than quiet, but I wouldn't  
8 consider it extremely noisy.

9 MR. WESTERFIELD: Again, this is the  
10 ambient level at noise A, without the project.  
11 Moderately quiet.

12 MR. BASTASCH: Correct.

13 MR. WESTERFIELD: And I'm asking you to  
14 voice that opinion in your professional capacity.  
15 Is your answer the same?

16 MR. BASTASCH: Yes.

17 MR. WESTERFIELD: And could you make a  
18 similar judgment with reference to point R?

19 MR. BASTASCH: Point R, the staff's  
20 results were 54, and it is somewhat louder than A.  
21 But I would still put it in that realm of  
22 moderate, you can still hold a conversation  
23 without having an elevated voice.

24 MR. WESTERFIELD: Okay, you just called  
25 it moderate. Would you call it moderately quiet,

1 would you call it moderately loud, or are you just  
2 saying it's moderate.

3 MR. BASTASCH: I would just say it's  
4 moderate.

5 MR. WESTERFIELD: So if you were to --  
6 all right, it's moderate. Now for point A, how  
7 much of an increase -- in your professional  
8 judgment -- for the increase to be a significant  
9 adverse impact?

10 MR. BASTASCH: Again, using staff's  
11 criteria, that would be a ten decibel increase  
12 above the L90.

13 MR. WESTERFIELD: I'm not asking for  
14 staff, I'm asking for your professional judgment,  
15 based upon all your experience and training?

16 MR. BASTASCH: I would agree with the  
17 ten decibel assessment at that location.

18 MR. WESTERFIELD: And why is that?

19 MR. BASTASCH: Because the ten decibels  
20 is, the resulting level is not out of the ordinary  
21 for the area, and results in the level that  
22 complies with the 65 LDN requirement set out by  
23 the city.

24 MR. WESTERFIELD: Okay. And the same  
25 question with reference to point R. I'm sorry,

1 let me be more specific. Point R -- what kind of  
2 increase would you consider to be significant, in  
3 your professional judgment?

4 MR. BASTASCH: Again, I would probably  
5 go with the ten decibel increase as being a  
6 significant increase.

7 MR. WESTERFIELD: And why is that?

8 MR. BASTASCH: Because that would  
9 represent, at that location, an approximate  
10 doubling of the noise level, which is relatively  
11 constant based on the monitoring provided by  
12 staff.

13 MR. WESTERFIELD: And now, aren't the  
14 ambient noise levels in point A and point R  
15 different?

16 MR. BASTASCH: Correct.

17 MR. WESTERFIELD: And so is it your  
18 judgment that the ten decibels increase represents  
19 significance regardless of the difference in the  
20 ambient noise levels at the two points?

21 MR. BASTASCH: No, not in all cases. In  
22 these cases there is a seven decibel difference in  
23 the L90. If the ambient was 20, or 30, we may  
24 have a different potential threshold.

25 MR. WESTERFIELD: But considering the

1 ambient levels at point A and R here, is it your  
2 judgment that a ten decibel increase at both  
3 represents a significant adverse impact?

4 MR. BASTASCH: An increase above ten  
5 decibels would.

6 MR. WESTERFIELD: Yes. And that's your  
7 testimony, even though the ambient levels are  
8 different at each point?

9 MR. BASTASCH: Correct.

10 MR. WESTERFIELD: And again why is that?

11 MR. BASTASCH: I'm not certain that I  
12 understand what you're trying to get at?

13 MR. WESTERFIELD: So in your judgment  
14 does it make any difference that the ambient  
15 levels of the two different points are different?

16 MR. BASTASCH: They are not extremely  
17 different.

18 MR. WESTERFIELD: So it's because they  
19 are relatively similar, a ten decibel increase at  
20 both is an appropriate significance criteria?

21 MR. BASTASCH: In my opinion.

22 MR. WESTERFIELD: Okay, that's all the  
23 questions I have.

24 HEARING OFFICER VALKOSKY: If I can get  
25 just a couple of points of clarifications. One,



1 we were talking about the ten decibel increase --  
2 that's on the L90 descriptor?

3 MR. BASTASCH: Yes. That's what I was  
4 looking at. I'm evaluating noise table 4 revised,  
5 based on page three of their errata.

6 HEARING OFFICER VALKOSKY: Okay, and  
7 when you talk about a ten decibel increase as a  
8 criteria for determining significance, does that  
9 mean one decibel through nine decibels are not  
10 significant, and 11 through whatever are  
11 significant. What happens when it's ten, I guess,  
12 is what I'm asking?

13 MR. BASTASCH: I would say 11 and above  
14 would be potentially significant. And if you were  
15 at 11 -- I don't know that there's a hard and  
16 fast --

17 HEARING OFFICER VALKOSKY: Well, since,  
18 you know, we are tossing this around, and it shows  
19 up in a lot of charts, so you're basically saying  
20 a one through ten decibel increase would not meet  
21 your criteria for a threshold of significance,  
22 correct?

23 MR. BASTASCH: Correct.

24 HEARING OFFICER VALKOSKY: And that 11  
25 and above would?

1 MR. BASTASCH: Correct.

2 HEARING OFFICER VALKOSKY: That's all I  
3 wanted to clarify. Thank you. Mr. Sarvey?

4 MR. SARVEY: What is your margin of  
5 error you attribute to your projected plant noise  
6 levels?

7 MR. BASTASCH: Thus far, on every plant  
8 we've done compliance monitoring, our model has  
9 been significantly conservative, on the order of  
10 three to five decibels overestimating the  
11 predicted level.

12 MR. SARVEY: And have you modeled a  
13 project with this configuration before?

14 MR. BASTASCH: Similar configurations.

15 MR. SARVEY: But not the exact same?

16 MR. BASTASCH: No, no project is exactly  
17 the same.

18 MR. SARVEY: Okay. All right. Earlier  
19 you said that noise is subjective, I mean so far  
20 as one person might think it's a nuisance, and  
21 others not, is that correct?

22 MR. BASTASCH: People have different  
23 opinions of what is quiet and what is loud, that  
24 is correct.

25 MR. SARVEY: And what margin of error do

1     you predict in your estimate of ambient conditions  
2     from your monitoring?

3             MR. BASTASCH: Our monitoring was done  
4     with type one precision equipment. I would  
5     anticipate the error there to be plus or minus one  
6     decibel.

7             MR. SARVEY: Now, measurement site A,  
8     you predict that the ambient level is 47?

9             MR. BASTASCH: That's staff's  
10    calculation, yes.

11            MR. SARVEY: Okay. If you have plus or  
12    minus margin of error, that ambient level at site  
13    A could be 46 or it could be 48, correct?

14            MR. BASTASCH: A one decibel difference  
15    is not perceivable.

16            MR. SARVEY: But if, let's say, it was,  
17    and your margin of error could be, let's say it  
18    could be 46 to 48?

19            MR. BASTASCH: That would be, that's  
20    possible.

21            MR. SARVEY: If the ambient noise level  
22    at measurement site A was 46, and your projected  
23    project noise was 57, that would be an 11 deviate  
24    change, and didn't you earlier say that you  
25    believed that would be considered significant?

1           MR. BASTASCH: I believe I stated that,  
2 at 11 decibels, that's at the borderline there.  
3 There was no clearcut borderline.

4           MR. SARVEY: Okay. Now would you agree  
5 with this statement, "ten DBA changes  
6 subjectively heard is an approximate doubling in  
7 loudness."

8           MR. BASTASCH: Correct. I believe I  
9 stated that.

10          MR. SARVEY: Thank you. In terms of  
11 construction noise, you modeled the noise for the  
12 closest residence as being 1,000 feet from the  
13 project, is that correct?

14          MR. BASTASCH: Correct. That's in my  
15 field testimony.

16          MR. SARVEY: Isn't it true that the  
17 closest residence is 700 feet from the project?

18          MR. BASTASCH: We have a map of how we  
19 determined our distances over there.

20          MR. SARVEY: So you weren't aware that  
21 there were residences within 700 feet of the  
22 project, is that correct?

23          MR. BASTASCH: I don't believe there are  
24 residences within 700 feet of the project.

25          MR. SARVEY: Thank you. Okay, earlier

1     you said you wanted to change your noise condition  
2     1 because you wanted to extrapolate from the  
3     center of the plant out to the residences, and you  
4     did that in order to avoid the possibility that  
5     other noises could be added to that level that  
6     could be attributed to your plant, correct?

7             MR. BASTASCH: That's a standard  
8     condition that's been in almost every proceeding.  
9     And the reason it's there is so that we can  
10    isolate the plant noise level, which is what we're  
11    regulating here. We're not regulating the noise  
12    level of Nulaid Foods or any of the adjacent  
13    industrial areas.

14            MR. SARVEY: So do you ever consider  
15    cumulative noise impacts?

16            MR. BASTASCH: They have been considered  
17    in the application.

18            MR. SARVEY: What necessary steps will  
19    MID take to eliminate total noises from this plant  
20    if they do discover them?

21            MR. BASTASCH: That might be something  
22    you might want MID to address?

23            MS. WARREN: Would you give us just a  
24    minute here to figure out who would be best to  
25    address that question.

1           MR. BASTASCH: Okay. There's a  
2 condition of exemption that requires an evaluation  
3 of tunnel noise, and there are various measures  
4 which can be used to address total noise, which  
5 include lagging, or construction of enclosures.

6           MR. SARVEY: Have you been involved in a  
7 power plant that actually did develop tonal noises  
8 after it was cited?

9           MR. BASTASCH: There was one facility in  
10 Oregon that had a tonal noise issue that we  
11 mitigated.

12          MR. SARVEY: And what steps did you take  
13 to mitigate that?

14          MR. BASTASCH: We lagged the valves and  
15 the piping.

16          MR. SARVEY: Are you aware of any other  
17 noise standards that the city of Ripon has, other  
18 than a 65 DB limit?

19          MR. BASTASCH: In Appendix A of the  
20 filed testimony you'll see a letter, or an  
21 application, from the city of Ripon that  
22 summarizes their ordinances with respect to this  
23 project, and that's what I'm aware of.

24          MR. SARVEY: And was there any other  
25 ordinances other than the 65 DBA limit? Do you

1 want to take a second and take a look at that?

2 MR. BASTASCH: Yes, the letter speaks  
3 for itself.

4 MR. SARVEY: Okay. Do you know if  
5 whether the city of Ripon enforces the 65 DBA  
6 limit?

7 MR. BASTASCH: I have no direct  
8 knowledge.

9 MR. SARVEY: If the resident at  
10 measurement site R is already complaining about  
11 the current noise levels, and already considers it  
12 a nuisance, would a 4 DBA increase exacerbate,  
13 make the nuisance worse?

14 MR. BASTASCH: I don't believe so. One  
15 of the major complaints that that resident had was  
16 with respect to the tonal characteristic of the  
17 noise being generated, and we won't have that.

18 MR. SARVEY: Thank you.

19 HEARING OFFICER VALKOSKY: Any redirect,  
20 Ms. Warren?

21 MS. WARREN: Yes. Give me just a  
22 moment, please. Just a couple, okay. With  
23 respect to the effect or the ability of the  
24 potential for noise increase at point R, is there  
25 any affect -- do the intervening plant noises

1     between the plant location and point R location  
2     have any effect on the potential for hearing the  
3     plant at point R?

4             MR. BASTASCH:  Yes.  They tend to mask  
5     the plant.

6             MS. WARREN:  Can you explain that?

7             MR. BASTASCH:  Thereby you wouldn't  
8     necessarily be hearing the plant noise.  You'd be  
9     hearing the plant noise as a component  
10    potentially, if you could even distinguish the  
11    plant noise from the existing noise levels there.  
12    I think that's probably the best way to  
13    characterize it.

14            Masking is the ability to distinguish  
15    distinct noise sources, and the existence of the  
16    noise sources there would tend to mask the plant  
17    noise, making it less distinguishable.

18            MS. WARREN:  Thank you.  That was all.

19            HEARING OFFICER VALKOSKY:  Redirect?  
20    I'm sorry, recross?

21            MR. WESTERFIELD:  No further questions.

22            MR. SARVEY:  No further questions.

23            HEARING OFFICER VALKOSKY:  Any  
24    statements from anyone here present regarding  
25    noise?  Okay, Ms. Kaefer?



1 MR. WESTERFIELD: Wait -- do you want to  
2 hear from the Applicant's witness before public --

3 HEARING OFFICER VALKOSKY: No, I'd like  
4 to hear on what we've heard so far. We've been  
5 talking specifically about a lot of residences and  
6 things.

7 MS. KAEFER: Well, I have so many  
8 papers, I don't know where to begin. But  
9 basically, I met -- I'm sorry, I forgot your name,  
10 I'm terrible with --

11 MR. BASTASCH: Mark.

12 MS. KAEFER: Mark, whom I met this  
13 morning. And all of these people have been to my  
14 house. And can I just ask him one question? Do  
15 you think my house is loud now, when we were there  
16 today? I mean, when you're using moderate or --  
17 and, that it's not loud, it's moderately quiet as  
18 opposed to moderately loud?

19 MR. BASTASCH: I believe I said  
20 moderate.

21 MS. KAEFER: Well, you answered to his  
22 number, not to my specific house, which -- we know  
23 what that number is.

24 MR. BASTASCH: Right And I would say  
25 you have a moderate noise level. Moderately

1     quiet, I believe, is what I used for location A.

2     And you are definitely louder than location A.

3             MS. KAEFER:   And I understand from all  
4     the various noise people that I've spoken with  
5     that a ten decibel difference is twice as loud as  
6     the existing number.   The existing number right  
7     now is not acceptable.   I mean, and there's a 65  
8     number that Mr. Sarvey used.

9             Actually, in the municipal code for our  
10    particular area, it's 50 to 60 is what it says is  
11    acceptable.   And there are several times little  
12    spikes in this, at 3:00 in the morning, and 5:00  
13    in the morning, that these things are way above  
14    that.

15            I understand it's an issue with the  
16    city.   But I also, the word distinguishable noise,  
17    added to what we already have -- we've had a tonal  
18    noise issue, which right now has been addressed.  
19    I went and talked to Nulaid, and they actually  
20    have gotten rid of the noise that was really  
21    really bothering us.

22            We went on a tour, with one of my other  
23    neighbors and I with Susan Strachan, a week ago,  
24    of the Woodland plant.   There were two  
25    distinguishable tonal noises, which is the noise

1 issue that we have. Both of those, one we heard  
2 from the site they first took us to -- and I don't  
3 know the difference, but it was about the distance  
4 of what my house is to where the proposed plant  
5 is, in proportion to where their existing plant is  
6 there, although they're saying it's not the same  
7 because it doesn't have the things that are making  
8 the noise there.

9 But my point is, there are two tonal  
10 noises there, and that's what we don't want, a  
11 distinguishable noise over and above this. And if  
12 ten is double then four is almost half again as  
13 much.

14 HEARING OFFICER VALKOSKY: And what I  
15 would suggest you do is ask the Applicant what the  
16 effect of their project on your perceived noise  
17 levels would be. That's why we're doing it this  
18 way. You can ask the same thing from staff too.  
19 But right now, understand that Applicant has taken  
20 measurements, as has staff.

21 I'd like to hear that explanation.

22 MR. BASTASCH: Certainly. The increase  
23 in noise at your house is not predicted to be ten  
24 decibels, first and foremost.

25 MS. KAEFER: Right.

1           MR. BASTASCH: So we're talking, based  
2 on the measurements and evaluation by staff of an  
3 increase of 4 decibels, and that's based off of  
4 the L90. So we're talking about increasing the  
5 quietest ten percent of the time period by 4  
6 decibels. Three decibels is considered, in an  
7 outside environment, a barely perceptible  
8 difference.

9           We're not anticipating, nor are we  
10 allowed to have, any pure tones. So what I was  
11 trying to state earlier is that we anticipate the  
12 plant will blend in with the existing noise, and  
13 that the plant noise will not be strongly  
14 distinguishable from the existing noise.

15           MS. KAEFER: Strongly distinguishable.  
16 But maybe distinguishable.

17           MR. BASTASCH: I'll never say that  
18 nobody will ever hear it, because somebody may  
19 hear it. And I don't want to set a false  
20 expectation that you're not going to hear the  
21 plant. What I'm saying is that the plant is going  
22 to be of a character that it's going to blend in  
23 with the surrounding noises.

24           MS. KAEFER: I guess, because we've  
25 really gone over all this before, the biggest

1     thing is just who is going to enforce --

2                 HEARING OFFICER VALKOSKY:  Yes, and  
3     we'll deal with that when we get to the staff  
4     issue.  I think that's kind of a separate topic.  
5     okay?  Thank you.  Ms. Lopez?  And again, if you  
6     could keep the comments, any question that you  
7     have directed toward Applicant's witness that they  
8     might answer.

9                 MS. LOPEZ:  Yes.  I live at 658 South  
10    Locust.  I am the house that's going to be --

11                HEARING OFFICER VALKOSKY:  Excuse me,  
12    ma'am.  Could you identify yourself?

13                MS. LOPEZ:  My name is Mercedes Lopez.  
14    And basically the question that I have is, because  
15    I do live next to the trucking company, and noise  
16    is subjective, but it also is ever changing  
17    because of the reefers and trucks coming and  
18    going.  We do have very quiet times, and we have  
19    very loud times.

20                And I already have a hum coming all the  
21    way into my home.  So what I wanted to ask is what  
22    kind of noise will the plant be emitting?  Would  
23    it be a high pitch, would it be a hum, would it be  
24    clicking, clacking?

25                MR. BASTASCH:  I wouldn't characterize

1 it as high pitch. It's generally broadband in  
2 nature. Maybe characterized previously as more of  
3 a low roar, perhaps. I don't know how to  
4 qualitatively really state that. You did hear  
5 generally -- were you one of the people who went  
6 to Woodland?

7 MS. LOPEZ: No, I didn't.

8 MR. BASTASCH: Okay. It's hard to  
9 describe. I would anticipate that it would be  
10 somewhat similar to what you're experiencing now,  
11 but would not have any strong high-pitched tonal  
12 components.

13 And wouldn't be, wouldn't have any  
14 intermittent type of components that would cause a  
15 beat or some sort of varying noise level where it  
16 was going wah wah wah wah wah, or like a bad fan  
17 or something.

18 MS. LOPEZ: Would it be a constant  
19 noise?

20 MR. BASTASCH: Yes, it would be  
21 characterized as a constant noise. And constant  
22 noises are generally considered less disturbing  
23 than intermittent noises, because you --

24 MS. LOPEZ: I tend to disagree with  
25 that, because of the hum that is in my home at

1 2:00 in the morning. I still hear it. And that  
2 is one of the main points that's brought me here  
3 tonight, because that hum, being so close to me, I  
4 really don't need anything adding to it. And that  
5 is one of my main concerns.

6 MR. BASTASCH: I think, like I stated  
7 previously, given the four decibel increase over  
8 the L90 that we're talking about here, I don't  
9 think that this is going to be extremely  
10 discernible from the existing noise level.

11 MS. LOPEZ: Okay. All right, thank you.

12 HEARING OFFICER VALKOSKY: Does your  
13 conclusion apply during the quiet times that Ms.  
14 Lopez referred to?

15 MR. BASTASCH: That's right. I'm  
16 referring to what staff analyzed, which was the  
17 quiet time.

18 HEARING OFFICER VALKOSKY: Okay. So  
19 even the four decibel increase in the quietest  
20 time of the night should not be discernible, is  
21 that a fair characterization of your testimony?

22 MR. BASTASCH: Correct.

23 HEARING OFFICER VALKOSKY: Thank you.  
24 Anything else for Applicant's witness? Your  
25 exhibits, please.

1 MS. WARREN: Can I just ask a few  
2 followup questions from the issues that were  
3 raised?

4 HEARING OFFICER VALKOSKY: Sure.

5 MS. WARREN: Great. Is it anticipated  
6 that the plant would produce any audible pure  
7 tones?

8 MR. BASTASCH: No.

9 MS. WARREN: Will the potential for  
10 other audible tones be addressed by the conditions  
11 of exemption that are proposed?

12 MR. BASTASCH: Correct. Those have to  
13 be evaluated, and measurements have to be  
14 conducted at the residences themselves.

15 MS. WARREN: Are you familiar with any  
16 other projects where such similar conditions of  
17 exemptions have been used?

18 MR. BASTASCH: Yes. On almost every  
19 proceeding I've been involved in we've had  
20 similar --

21 MS. WARREN: Can you state an opinion on  
22 whether those conditions of exemption have been  
23 successful in mitigating potential noise impacts  
24 in previous projects?

25 MR. BASTASCH: Yes, I believe they have.



1 MS. WARREN: Are you familiar with the  
2 Woodland generating station project that was  
3 referred to earlier?

4 MR. BASTASCH: I am.

5 MS. WARREN: Are you familiar with the  
6 conditions of exemption in that project?

7 MR. BASTASCH: I am.

8 MS. WARREN: Are they similar to the  
9 ones that are proposed here?

10 MR. BASTASCH: They are.

11 MS. WARREN: Are you aware that, whether  
12 or not compliance monitoring for pure tones has  
13 occurred for that project?

14 MR. BASTASCH: It has.

15 MS. WARREN: And can you tell us what  
16 the results of that compliance testing showed?

17 MR. BASTASCH: That there were no pure  
18 tones at either of the compliance monitoring  
19 points.

20 MS. WARREN: Did that compliance  
21 monitoring cover any other issues with respect to  
22 noise? Or was it just focused on --

23 MR. BASTASCH: The requirements in the  
24 Woodland project were to evaluate the overall  
25 noise level, as we are required to here, and to

1 evaluate the tonal noise level, as we are required  
2 to here.

3 MS. WARREN: And in both of those areas  
4 was the testing performed?

5 MR. BASTASCH: Yes. And it was  
6 favorable in both results.

7 MS. WARREN: Thank you.

8 HEARING OFFICER VALKOSKY: In those  
9 other cases that you referred to, having both  
10 conditions of certification and conditions of  
11 exemption, which agency was responsible for  
12 monitoring compliance and ensuring that conditions  
13 were met?

14 MR. BASTASCH: I conducted and drafted  
15 two reports for that project. I submitted them to  
16 the Modesto Irrigation District, who submitted  
17 them to the California Energy Commission.

18 HEARING OFFICER VALKOSKY: Okay. So I  
19 take it that means, as far as you know, the Energy  
20 Commission was responsible for monitoring and  
21 enforcement?

22 MR. BASTASCH: As far as I know that was  
23 a condition of exemption, and was required as part  
24 of the CEC licensing process, and I --

25 HEARING OFFICER VALKOSKY: Right. And

1 the other cases that you referred to, which I  
2 assume you were talking about conditions of  
3 certification in prior plants, those conditions  
4 would have been enforced by which agency?

5 MR. BASTASCH: Again, my understanding  
6 would have been the California Energy Commission.  
7 I did not notice or conduct anything different for  
8 that application as I did for other applications  
9 that had gone through the AFC process.

10 HEARING OFFICER VALKOSKY: Okay. Thank  
11 you. Anything further for this witness?

12 MR. SARVEY: Nothing further.

13 MR. WESTERFIELD: No.

14 HEARING OFFICER VALKOSKY: Your  
15 exhibits, Ms. Warren?

16 MS. WARREN: Yes. The witness  
17 identified those exhibits. It was exhibit 1,  
18 section 8 and appendix 8.5 -- section 8.5 and  
19 Appendix 8.5B; and 8.5C of the SPPE; it was  
20 exhibit 2 SPPE, supplement A as it pertained to  
21 noise; exhibit 5, data response set 1A, numbers 50  
22 and 51, and exhibit 15, draft initial study  
23 comments set one, as it pertained to noise issues  
24 and I would move those.

25 HEARING OFFICER VALKOSKY: Is there

1 objection to the admission of those documents?

2 MR. WESTERFIELD: No objection.

3 MR. SARVEY: No objection.

4 HEARING OFFICER VALKOSKY: No objection,  
5 they are admitted. Mr. Westerfield, your witness.

6 MR. WESTERFIELD: We call Mr. Steve  
7 Baker to speak to noise and vibration. I believe  
8 he is already sworn.

9 HEARING OFFICER VALKOSKY: That is my  
10 recollection.

11 MR. WESTERFIELD: Mr. Baker, could you  
12 please state your qualifications for the record in  
13 the, I guess, specialty of noise?

14 MR. BAKER: At the Energy Commission  
15 I've been responsible for the subject area of  
16 noise for the last 11 years. Besides my technical  
17 education in mechanical engineering, which gave me  
18 a fairly solid background in physics, I've endured  
19 a couple of training classes on noise.

20 Three days of training specifically on  
21 noise plus a class on California Environmental  
22 Quality Act. And I've got, as I mentioned, 11  
23 years experience.

24 MR. WESTERFIELD: Approximately how many  
25 Energy Commission siting cases have you prepared

1 noise testimony?

2 MR. BAKER: I've prepared the noise  
3 testimony in 13 cases to date.

4 MR. WESTERFIELD: And in approximately  
5 how many siting cases have you supervised  
6 preparation for noise testimony?

7 MR. BAKER: 26.

8 MR. WESTERFIELD: And could you tell us,  
9 please, did you prepare the noise and vibration  
10 testimony that is a part of staff's final initial  
11 study?

12 MR. BAKER: I did.

13 MR. WESTERFIELD: And is it correct to  
14 the best of your knowledge?

15 MR. BAKER: Yes it is.

16 MR. WESTERFIELD: And did you also  
17 prepare staff's supplemental testimony filed by  
18 errata last week?

19 MR. BAKER: Yes I did.

20 MR. WESTERFIELD: Okay. Is it true and  
21 accurate to the best of your knowledge?

22 MR. BAKER: Yes, with one correction.  
23 I'd like to add a word. If you go to the  
24 supplemental noise testimony, page three, in the  
25 second line, after 53.6 DBA, I'd like to add the

1 word "nearly", so it reads "nearly twice as loud."

2 MR. SARVEY: Would you repeat that?

3 MR. WESTERFIELD: Would you like him to  
4 repeat that again?

5 MR. SARVEY: Okay, got it, no problem,  
6 perfect.

7 MR. WESTERFIELD: Okay. With that  
8 exception is your supplemental true and accurate  
9 to the best of your knowledge?

10 MR. BAKER: Yes.

11 MR. WESTERFIELD: Rather than have you  
12 go through these two testimonies separately, I'd  
13 like you, if you will, to summarize them together  
14 as your final noise testimony.

15 MR. BAKER: In analyzing noise staff  
16 examines noise in both construction and long-term  
17 operation of the power plant. The analysis  
18 includes a determination of whether predicted  
19 noise emissions will comply with applicable LORS,  
20 and whether predicted noise emissions will be so  
21 severe as to constitute a significant adverse  
22 impact, as defined by CEQA.

23 Construction noise was predicted by the  
24 Applicant in their application. The only  
25 applicable LORS is the city of Ripon municipal

1 code, which limits the hours during which  
2 construction can take place. The Applicant's  
3 indicated in its application that they will comply  
4 with this restriction.

5 The loudness of construction noise was  
6 predicted in the application at the nearest  
7 sensitive receptors, those residences to the west  
8 of the project site designated as monitoring  
9 location A. The Applicant predicted construction  
10 noise levels that would reach as high as 57 DBA at  
11 this location.

12 Compared to the ambient noise level of  
13 52 DBA this represents an increase of up to five  
14 DBA, which would not be perceived as a significant  
15 increase. In the written testimony of August 27th  
16 the Applicant corrected an error in this figure.  
17 The application was based on an assumed distance  
18 to location A of 1,900 feet. The actual distance  
19 is 1,045 feet.

20 When the calculations are corrected for  
21 this distance, predicted construction noise at  
22 location A becomes as high as 64 decibels.  
23 Comparing this to the ambient level of 52 DBA  
24 yields an increase that will be noticeable, but  
25 for the limited period of those portions of

1 construction that actually produce that much  
2 noise, this should be tolerable for residents.

3 Keep in mind that this noise is limited  
4 to daytime only. Power plant operational noise is  
5 assumed to occur at any and all times of the day  
6 and night. In fact, the Applicant predicts that,  
7 during the canning season, the plant may run  
8 continuously for three months.

9 The only applicable LORS is the city of  
10 Ripon general plan noise element, which declares  
11 noise up to 60 DBA LND as normally acceptable, and  
12 up to 70 DBA LND as conditionally acceptable. The  
13 Applicant predicts project noise at monitoring  
14 location A of 63 DBA LDN. The application even  
15 includes a letter from the city of Ripon which  
16 states that the city considers levels up to 65 DBA  
17 acceptable.

18 For a relatively noisy neighborhood such  
19 as this, 63 DBA represents an acceptable level.  
20 The Applicant predicted the noise emissions from  
21 the plant in its application at location A,  
22 residences to the west. Residents at location A  
23 may see an increase of noise levels of 10 DBA.

24 In evaluating long-term noise impacts  
25 from plant operation staff has commonly assumed



1     that increases greater than 10 DBA present a  
2     significant adverse impact, while increased up to  
3     10 DBA may or may not be construed as significant.  
4     In this case, due to the relatively noisy  
5     neighborhood around location A, an increase of 10  
6     DBA should not be particularly annoying.

7             Staff believes such an increase would  
8     not constitute a significant adverse impact. The  
9     Applicant further predicted noise emissions from  
10    the plant at location R, a group of residences to  
11    the north of the site, slightly farther from the  
12    plant than location A. Their predicted plant noise  
13    at R is 55 DBA.

14            Since the Applicant did not measure the  
15    ambient noise at location R, staff commissioned a  
16    survey which was performed August 25th through  
17    27th. And that survey showed that the ambient  
18    noise level at R is 54 DBA. This yields an  
19    increase of only 4 DBA, barely noticeable and an  
20    insignificant impact.

21            MR. WESTERFIELD: Okay. Mr. Baker, I  
22    believe you characterized the ambient noise at  
23    site A as relatively noisy, was I correct?

24            MR. BAKER: For a residential  
25    neighborhood, yes.

1           MR. WESTERFIELD: And the results, it  
2 sounds like, of the recent monitoring at site R  
3 indicated a higher ambient noise level, is that  
4 correct?

5           MR. BAKER: Yes.

6           MR. WESTERFIELD: And how would you  
7 characterize the ambient noise level at point R?

8           MR. BAKER: For a residential  
9 neighborhood it's quite noisy. I've, I don't  
10 believe in 11 years I've ever seen a noisier  
11 ambient in a residential neighborhood.

12          MR. WESTERFIELD: And so, could you  
13 explain again why the, I guess, cumulative  
14 increase in noise level from plant operations is  
15 not considered to be significant in your judgment?

16          MR. BAKER: Okay. At sight R,  
17 residences to the west of the project site -- let  
18 me repeat something Mr. Bastasch said during his  
19 testimony -- when staff looks at ambient noise we  
20 look at it very conservatively. Mr. Bastasch is  
21 correct in saying we're fairly unique in using the  
22 background noise level, the L90 noise level, as a  
23 measuring yardstick.

24          The reason for this is that power plant  
25 noise is fairly unique. Most noises that we hear

1     about vary with time. Power plant noise is  
2     especially constant and continuous. Very few  
3     noise producers put out such continuous noise as a  
4     power plant running at steady load. Because of  
5     this, when you add the power plant noise to the  
6     ambient regime, it effectively adds to the  
7     background noise level.

8             The background is what your ears hear  
9     all the time. When there's no dogs barking, no  
10    cars going by, no planes flying overhead, nobody  
11    dropping something and making a lot of noise,  
12    what's left is the background. And that's  
13    commonly taken in the industry as the L90.

14            When you add a continuous noise source  
15    to that background you get a new, higher  
16    continuous noise source. So you've effectively  
17    changed the background level. And so, because of  
18    this unique feature of power plants, staff has  
19    chosen, for many years -- even before I took over  
20    noise -- to use the background or L90 noise level  
21    as a base of measurement.

22            When you add the power plant noise to  
23    that you come up with a new, higher level. At  
24    site A predictions are that this level will  
25    increase as much as ten decibels. Generally, ten

1     decibels is a doubling of noise.

2             If it were extremely quiet -- we just  
3     dealt with another case, the San Joaquin Valley  
4     Energy Center project, in which the ambient noise  
5     level at the nearby residences went down into the  
6     low 20 decibel range. 24 decibels, for instance,  
7     that's less than one fourth as noisy as at site A.  
8     It's hold your breath quiet.

9             In a case like that, adding ten decibels  
10    is unconscionable. It would be clearly  
11    significant. Take a measurement around site A,  
12    measuring and monitoring location A with an  
13    ambient of 47 decibels, adding 10 decibels to that  
14    is not necessarily significant.

15            In fact, based on the noise level there  
16    and the characteristics of the neighborhood, staff  
17    has concluded that a ten decibel increase would be  
18    acceptable, would be an insignificant impact.

19            Another thing to keep in mind is, again  
20    as Mr. Bastasch alluded to, the computer modeling  
21    that predicts the noise from that not yet existent  
22    power plant, is conservative. Worst case would be  
23    a ten decibel increase. I don't think that will  
24    happen.

25            I think it will turn out that the

1 computer modeling was, as usual, conservative, and  
2 the actual increase will be something less than  
3 ten decibels. And because of all this, staff  
4 believes that the projected increase at location A  
5 is acceptable.

6 When we go to location R, first there  
7 will be less noise from the power plant. For one  
8 thing, the intervening buildings mask a lot of the  
9 noise from site R, whereas they're not in the way  
10 of site A. So there will be less project noise  
11 heard at site R.

12 And on top of that is the fact that it's  
13 already quite a bit noisier at site R. Using my  
14 figures, it's seven decibels noisier, which is a  
15 long way towards being twice as noisy as site A.  
16 So, because of the higher existing background  
17 noise level at R and the lower project noise,  
18 we're predicting that, at worst case, there could  
19 be as much as a four decibel increase.

20 Again, with conservative computer  
21 modeling and all, we can expect it to be less than  
22 four decibels. And when it gets down to three,  
23 you can't hear that unless you specifically sit  
24 there, hold your breath, and listen for it.

25 MR. WESTERFIELD: Now, Mr. Baker in your

1 I guess original testimony, you came to the  
2 conclusion that the back of the proposed project  
3 at location R would not create a significant  
4 adverse impact.

5           Nevertheless, you -- staff, because of  
6 the absence of ambient monitoring at that point,  
7 commissioned this noise survey at point R. Did  
8 the results of that monitoring affect your  
9 conclusion of no significant impact from the  
10 plant?

11           MR. BAKER: No. As a matter of fact,  
12 they buttressed the conclusion.

13           MR. WESTERFIELD: Could you explain why?

14           MR. BAKER: In the initial study  
15 analysis, lacking information on the ambient  
16 conditions at R I assumed that they were the same  
17 as at A, that is about 47 decibels. Since we were  
18 only adding the plant noise of 55 decibels to 47  
19 that would be an increase of eight decibels, which  
20 was even less than at location A.

21           That was the assumption. After Mrs.  
22 Kaefer and others raised questions, we  
23 commissioned a study and we found out that the  
24 noise at location R is in fact much noisier than  
25 47 decibels that one finds at A. 54 decibels is

1 quite a bit noisier.

2           So when we got those results we saw that  
3 our initial assumptions in the initial study were  
4 much more conservative than we thought.  
5 Therefore, the conclusions in the initial study  
6 are not changed at all.

7           MR. WESTERFIELD: Thank you very much.  
8 Those are all the questions I have.

9           HEARING OFFICER VALKOSKY: Mr. Baker,  
10 just very briefly, could you explain the basis for  
11 using the ten decibel increase as a threshold of  
12 significance?

13           MR. BAKER: Noise has been an area of  
14 formal official study for about 33 years now. The  
15 federal government, back in '69 or '70, after  
16 passing the national Environmental Protection Act,  
17 spent some money on studies of noise. It was  
18 found from these studies that persons of normal  
19 sensitivity will typically not be annoyed by  
20 noises less than five decibels greater than what  
21 they've been accustomed to.

22           People of normal sensitivity will often  
23 be annoyed with noises that are more than ten  
24 decibels greater. Between five and ten decibels  
25 some people will be annoyed, and some will not.

1 This is commonly recognized in the industry.

2 Staff has used these as a criterion for quite a  
3 few years, and we've been successful.

4 We've never yet found that these  
5 criteria were not acceptable. Success is, it's a  
6 measure of our success.

7 MR. WESTERFIELD: Are acceptable to  
8 whom?

9 MR. BAKER: People hearing the noise  
10 from the power plant.

11 MR. WESTERFIELD: Okay. Last question  
12 that I have is who is responsible for monitoring  
13 compliance and enforcing the two conditions of  
14 exemption that you propose?

15 MR. BAKER: I can give my non-legal  
16 opinion of what we're doing here, and after that  
17 I'll have to point to my lawyer. Condition Noise  
18 1 requires verification to be presented both to  
19 the city of Ripon and to the Energy Commission  
20 staff's compliance project manager.

21 So I assume that Commission staff will  
22 have at least some say in making sure that the  
23 plant, when built, is no noisier than promised.

24 As far as Condition Noise 2, which is  
25 intended to deal with any noise complaints by



1 nearby folks during either the construction or the  
2 operation of that plant, throughout the life of  
3 the plant, the way it's written here the  
4 verification involves only the city of Ripon.

5 So it's my understanding that the  
6 Commission staff would not be involved in dealing  
7 with noise complaints.

8 MR. WESTERFIELD: Is that a typical way  
9 of handling this in your experience?

10 MR. BAKER: Well, this is the first SPPE  
11 that I've dealt with where we're not treating it  
12 as an AFC. In all the past SPPE's I've dealt with  
13 in my 15 and two thirds years at the Commission  
14 the conditions have always been the same ones that  
15 we would recommend for an application for  
16 certification.

17 MR. WESTERFIELD: So, in other words,  
18 you would agree with Applicant's witness when he  
19 stated to the effect -- I'm paraphrasing very  
20 loosely -- that the Commission has always had the  
21 responsibility of ensuring compliance with noise  
22 levels, is that correct?

23 MR. BAKER: In my experience, yes.

24 MR. WESTERFIELD: Thank you.

25 HEARING OFFICER VALKOSKY: Cross-

1 examination?

2 MS. WARREN: None, thank you.

3 HEARING OFFICER VALKOSKY: Mr. Sarvey?

4 MR. SARVEY: Did the city of Ripon's  
5 noise regulations address increases in noise to  
6 residents?

7 MR. BAKER: Not that I'm aware of.

8 MR. SARVEY: Have you spoken with  
9 anybody in the city of Ripon in the planning  
10 department or anything, as far as enforcing these  
11 noise ordinances?

12 MR. BAKER: No.

13 MR. SARVEY: Earlier you said that, in  
14 your I guess it's 11 years of doing noise surveys  
15 for the CEC you've never seen a noisier ambient in  
16 a residential neighborhood, is that correct?

17 MR. BAKER: If memory serves, that's  
18 correct.

19 MR. SARVEY: And you also said that a 10  
20 DBA increase is actually nearly twice as loud --  
21 you corrected that, nearly twice as loud?

22 MR. BAKER: Well, ten decibels is twice  
23 as loud.

24 MR. SARVEY: Okay.

25 MR. BAKER: The, I think eight decibels

1 I was talking about before that was nearly twice.

2 MR. SARVEY: And you also said,  
3 testified that some people will be annoyed by  
4 increases of five to ten DB, is that correct?

5 MR. BAKER: Yes.

6 MR. SARVEY: Thank you, that's all I  
7 have.

8 HEARING OFFICER VALKOSKY: Any redirect,  
9 Mr. Westerfield?

10 MR. WESTERFIELD: No, we don't have any  
11 redirect, but I am informed by the project manager  
12 that he has spoken to the city of Ripon about  
13 enforcement issues with reference to noise. And  
14 so I'd just like to say that Dr. Reede is  
15 available to address that issue.

16 HEARING OFFICER VALKOSKY: Would you  
17 like to offer some supplemental testimony? That's  
18 what we're here for.

19 MR. WESTERFIELD: I think that would be  
20 a good idea.

21 HEARING OFFICER VALKOSKY: The witness  
22 has been sworn previously.

23 MR. REEDE: During the compilation of  
24 the final initial study I did have opportunity to  
25 speak with Mr. Ernie Tyhurst at the city of Ripon.

1 And it was in regards to the noise complaint form  
2 that we use in all of our AFC proceedings so that  
3 the Applicant can begin a noise resolution  
4 process.

5 And then report the results of that  
6 attempt to resolve a noise complaint to the CPM.  
7 He faxed to me the city of Ripon's general plan,  
8 noise element, and a copy of their noise  
9 ordinance, and a copy of their complaint form. In  
10 looking at the complaint form, and showing it to  
11 Mr. Baker, it was wholly inadequate.

12 And I suggested to Mr. Tyhurst that we  
13 had a form that, if it were used, would quickly  
14 and efficiently resolve noise complaints.

15 So I e-mailed and faxed him a copy of  
16 the noise 2 and the complaint resolution form.  
17 And he said that that was acceptable to the city  
18 and he was grateful for it.

19 In speaking with the Applicant I  
20 informed them that I had sent the noise complaint  
21 form and proposed noise condition of exemption to  
22 the city, and that it would require the Applicant  
23 to get a handheld noise monitor to go out there  
24 and verify when noise complaints came in.

25 HEARING OFFICER VALKOSKY: Okay, and

1 again we're talking about some techniques that  
2 will be used --

3 MR. REEDE: To resolve noise issues.

4 HEARING OFFICER VALKOSKY: Well, in  
5 talking about the techniques, there's a difference  
6 between using certain techniques and actually  
7 employing some form of enforcement to make sure  
8 that the results of those techniques are complied  
9 with. That's what I think the residents are more  
10 concerned about, frankly.

11 COMMISSIONER BOYD: I would agree the  
12 form can facilitate the resolution of complaint,  
13 but we have mixed bag on whether the city of Ripon  
14 will actually do anything with a new form or not.  
15 So that remains a little unclear to me. I'll  
16 reserve comment until the end of the night.

17 MR. REEDE: Okay.

18 HEARING OFFICER VALKOSKY: Mr.  
19 Westerfield, anything else?

20 MR. WESTERFIELD: No.

21 HEARING OFFICER VALKOSKY: Questions,  
22 Ms. Warren?

23 MS. WARREN: I don't have any questions  
24 of Dr. Reede. However, again, Susan has been in  
25 contact with the city of Ripon and indicates she

1 has some additional insight into this issue, if  
2 you would be open to having her share that?

3 HEARING OFFICER VALKOSKY: Absolutely.  
4 Ms. Strachan?

5 MS. STRACHAN: Just briefly, in my  
6 conversation with Mr. Tyhurst, one thing that he  
7 did state about the other projects for which Ms.  
8 Kaefer had issues with is that he said that the  
9 city doesn't have an existing enforcement code  
10 that allows them to go to existing facilities and  
11 deal with noise.

12 That what they're limited to is a police  
13 officer going to the facility, and it's up to that  
14 police officer's discretion to determine whether  
15 or not a particular noise source is a nuisance. I  
16 think that might be part of the frustration that  
17 Pam's been experiencing.

18 I know that, with regard to the city  
19 having the compliance responsibility through the  
20 noise complaint process that he looked very  
21 favorable to that, because it did give him a  
22 handle to do noise enforcement on an existing  
23 facility.

24 The noise standards that he cites that  
25 we have to adhere to for the city of Ripon are new

1 facilities and again doesn't give him that hook  
2 that he needs to go into an existing facility. So  
3 he was looking forward to the opportunity to have  
4 that authority.

5 HEARING OFFICER VALKOSKY: Okay, so then  
6 I take it he'll be able to do something more than  
7 send out the policeman to tell the neighbors to  
8 turn the radio down?

9 MS. STRACHAN: Exactly. In our case.  
10 And they've been trying the city through the years  
11 to try and get some kind of enforcement code  
12 going, but it hasn't happened yet.

13 COMMISSIONER PERNELL: But they have it  
14 on new facilities?

15 MS. STRACHAN: They have it on this  
16 facility, and they haven't -- if you're siting a  
17 facility, if someone were to site a facility just  
18 like we are, they have the noise element to adhere  
19 to that specifies certain noise levels that the  
20 facility must comply with.

21 But their problem has been existing  
22 facilities, such as the one near South Locust,  
23 where he says he doesn't have that enforcement  
24 authority to go in there and tell them that they  
25 need to lower, that they're making too much noise

1 basically.

2 COMMISSIONER PERNELL: Do you have a  
3 copy of it?

4 MS. STRACHAN: Of what, I'm sorry.

5 COMMISSIONER PERNELL: Of the city of  
6 Ripon's noise ordinance for new facilities?

7 MS. STRACHAN: Not with me. In our  
8 offices we have the noise element part of the  
9 general plan.

10 COMMISSIONER PERNELL: Could you get a  
11 copy to the Committee?

12 MS. STRACHAN: Sure.

13 COMMISSIONER PERNELL: Thank you.

14 MR. REEDE: Excuse me, Hearing Officer  
15 Valkosky, but my recollection of the noise element  
16 of the general plan -- and Mr. Baker can correct  
17 me if I'm wrong -- when we read it it said that no  
18 sound shall go beyond the boundary lines of the  
19 property. The one that I read, it had one  
20 paragraph, and it had no noise measurement.

21 HEARING OFFICER VALKOSKY: I take it,  
22 Mr. Baker, you didn't agree with that?

23 MR. REEDE: She has a copy of it.

24 MR. BAKER: Mr. Valkosky, my memory is  
25 very good, but it's also very slow.



1 MR. REEDE: Uh, continue on, I'll find  
2 it.

3 MS. STRACHAN: Commissioner Pernell, if  
4 I could just add, in terms of the specific noise  
5 requirements that the city has that pertain to the  
6 project, those are summarized in the letter from  
7 the city of Ripon regarding our compliance with  
8 the project that's in our Appendix to our SPPE  
9 application.

10 COMMISSIONER PERNELL: So we have it?

11 MS. STRACHAN: You have what we've cited  
12 as the applicable, or the city has cited, and it's  
13 in our, it's included in our LORS section of the  
14 application.

15 HEARING OFFICER VALKOSKY: An appendix  
16 to exhibit 1, in other words? Exhibit 1's your  
17 SPPE application?

18 MS. STRACHAN: Yes, and it's 8.5, and if  
19 you give me a second I can give you the citation.  
20 Appendix 8.5A to the SPPE application. And it's  
21 the city of Ripon's letter, and they specify what  
22 sections of their code are applicable to the  
23 project.

24 HEARING OFFICER VALKOSKY: Thank you,  
25 Ms. Strachan, I appreciate that. Anything else?

1 Would staff like a recess to sort this out?

2 MR. REEDE: No, we're fine.

3 MR. WESTERFIELD: No, that's all we  
4 have.

5 HEARING OFFICER VALKOSKY: Ms. Warren,  
6 anything else on this topic?

7 MS. WARREN: No, other than we want to  
8 make sure, since this appendix has come up a  
9 couple times now at various points, that it was  
10 not specifically culled out in Mr. Bastasch's  
11 testimony as an exhibit to that testimony. So I  
12 would like to, if possible, make sure that that is  
13 specifically included as an exhibit in this  
14 proceeding.

15 HEARING OFFICER VALKOSKY: It is --  
16 well, we have a reference to it as an appendix to  
17 exhibit 1. That's my understanding, Ms. Strachan?

18 MS. WARREN: That is correct.

19 HEARING OFFICER VALKOSKY: Okay.

20 MS. WARREN: Yes, it will be.

21 HEARING OFFICER VALKOSKY: Yes, so that  
22 is included in exhibit 1.

23 MS. WARREN: Thank you for the  
24 clarification, nothing further from us.

25 HEARING OFFICER VALKOSKY: Mr. Sarvey,

1 anything further on noise?

2 MR. SARVEY: Nothing further, thank you.

3 HEARING OFFICER VALKOSKY: Okay, Ms.

4 Kaefer and Ms. Lopez, if you have any questions --  
5 and please if you can direct them to staff, to  
6 what staff's presentation has been thus far, I  
7 would appreciate that. Okay?

8 MS. KAEFER: As to the city of Ripon's  
9 noise element, because they have specifically told  
10 me -- and I hope I'm not repeating, because I've  
11 talked to so many people individually that I don't  
12 want to make sure that everybody knows.

13 As far as Susan talking to Mr. Tyhurst  
14 and telling, being told that you can call the  
15 police, that that's the only option? I called the  
16 police, you were there, you know the tonal noise  
17 that there was was outrageous.

18 The police came to my front porch, which  
19 is actually on the other side of my house from  
20 where most of the noise is. Two police came, he  
21 was actually the training officer and a new  
22 officer, and they stood on my front porch.

23 And I said "do you hear that noise?"  
24 And they said "yes." And I said "is it  
25 acceptable?" And they said "well, no, but the

1 city of Ripon does not have a noise ordinance, and  
2 therefore there is nothing that we can do about  
3 it." They will not go anywhere.

4 He showed me a copy of the, it was  
5 called the quick code, that he had in his car.  
6 And he went back to his office and he called me  
7 from the office and told me that there were  
8 absolutely no codes, that the only thing that the  
9 police will do in the city of Ripon if there's a  
10 noise issue, is if it's a retaliatory statement or  
11 hollering -- if somebody goes by and yells at you  
12 or makes an obscene gesture with their hand that  
13 would cause you to make a retaliatory action to  
14 them, then they would intervene.

15 And I said "so if at midnight somebody's  
16 playing their stereo out there, and I can't sleep,  
17 I can't do anything about that?" And he said  
18 "yes, you can make a citizen's arrest, and then  
19 you can call us, and we will come and enforce the  
20 citizen's arrest. But we will not go to this  
21 person's house."

22 So you can see we've really got our  
23 hands tied here. The city attorney told me -- on  
24 the telephone that same day when I called and  
25 asked about the city council and names and numbers

1 and okay, how can I find out how we're going to  
2 enforce this stuff -- they told me specifically  
3 that the city council voted to not enforce the  
4 noise ordinance because the city already has  
5 enough fingers in the pie, and that the residents  
6 don't want the city to be telling them what to do.

7 And so therefore they do not have an  
8 enforcement code to the noise element. Simple as  
9 that. And he said if you want to change it, you  
10 need to go before the city council and, you know,  
11 make a little motion, and then they can vote on it  
12 again. But they have specifically voted to not  
13 enforce a noise element.

14 I have a problem with that. We all have  
15 a problem with that, as far as anybody enforcing  
16 this, if you guys don't enforce this.

17 MR. BAKER: Yes, it's my understanding  
18 that the officer is correct, that the city of  
19 Ripon does not have a noise ordinance. It has a  
20 general plan noise element, but general plan noise  
21 elements only pertain to new development, in this  
22 case the power plant. They have no authority over  
23 existing noise sources.

24 MS. KAEFER: And the way that I hear it,  
25 they don't even over new development. The only

1     thing they told me about new development was the  
2     landscaping, because we complained about this fire  
3     hazard. That they can enforce that. But  
4     everything else in the city is grandfathered in,  
5     and so you're just SOL.

6             MR. BAKER: The noise element LORS that  
7     we're referring to here is the 60 or 65 or 70  
8     decibels, depending on who you listen to, that the  
9     plant must meet. And, you know, our analysis  
10    shows that the plant will in fact comply with that  
11    LORS. But that has nothing to do with noise from  
12    existing sources. I'm sorry, but --

13            MS. KAEFER: And you said that they told  
14    you 65, and there is specifically in there it says  
15    50 or 60 for our particular, in the municipal code  
16    there?

17            MR. BAKER: From 50 to 60 decibels, for  
18    single family residence, is considered always  
19    acceptable. The letter from the city of Ripon,  
20    which is in the Applicant's application Appendix  
21    8.5A says 65 decibels. If you look further in the  
22    actual noise element table it shows a  
23    conditionally acceptable up to 70 decibels.

24            MS. KAEFER: Right, but it specifically  
25    spells out different things, and in ours it says

1 50 to 60 for residential with mobile homes, single  
2 family residents, which we are. So the 50 to 60  
3 is what's in there that I read.

4 MR. BAKER: There's also the difference  
5 between always acceptable and conditionally  
6 acceptable. And let me find the right page --

7 MS. KAEFER: And we're still under that.  
8 You know, I have to say that I like your  
9 testimony, that at least you acknowledge that 55  
10 is loud.

11 MR. BAKER: Yes. I've been at  
12 residential neighborhoods in the middle of busy  
13 cities, such as San Francisco, and I don't recall  
14 seeing any figures greater than this.

15 MS. KAEFER: Okay, and we're talking  
16 about 3:00 in the morning, it's still 55.

17 MR. BAKER: One feature of your  
18 neighborhood is that it's noisier at night than it  
19 is in the daytime. I think part of that may be  
20 due to transportation noise, you know, trucks on  
21 the freeway.

22 Plus truck loading and unloading in the  
23 nighttime hours. That's when most of commerce  
24 moves, during the night. Sites near freeways  
25 typically hear more noise at night when the trucks

1 are running.

2 MS. KAEFER: We actually don't hear  
3 freeway noise, or the trains that were cited in  
4 the city. What we hear is the noise which is  
5 right where you guys are going.

6 MR. BAKER: But they're not there yet.  
7 And when they are, according to our calculations  
8 and estimations, the project will not be  
9 significantly noisier than it is at your location.  
10 If we're wrong, there's a noise complaint process  
11 here to try to deal with it.

12 MS. KAEFER: If we can find who to take  
13 it to.

14 HEARING OFFICER VALKOSKY: Mr. Baker, do  
15 you have any opinion as to the validity of the  
16 citizen's arrest?  
17 (laughter)

18 MS. KAEFER: I have to say something  
19 else. This is my retirement home. I need to live  
20 in Ripon, and I don't want to make a bunch of  
21 enemies of higher up people either, you know?

22 HEARING OFFICER VALKOSKY: Ms. Kaefer,  
23 do you mind if I repeat a suggestion I made to you  
24 a little while ago?

25 MS. KAEFER: No.



1                   HEARING OFFICER VALKOSKY: I think you  
2 should run for Mayor.

3 (laughter)

4                   Ms. Lopez, do you have anything?

5                   MS. LOPEZ: Well, I just want to mention  
6 the fact that we do live near the trucking  
7 company. And when I did call the city and police  
8 they did tell me that all they could do was  
9 probably go and ask them to turn it down, or to  
10 move the trucks a little further away.

11                   We do live near the community center,  
12 which also holds weddings and family reunions.  
13 And sometimes, even inside my house with the doors  
14 and windows closed I could hear the music. And I  
15 have called the police, and they told me that they  
16 were basically just going to go ask to turn it  
17 down.

18                   I have asked diverse people, and there  
19 is no enforcement in the city of Ripon. I have  
20 gotten the same runaround that Ms. Kaefer has also  
21 gotten, and it worries me that at 3:00 in the  
22 morning something might go wrong at the plant, and  
23 who do we call to make sure it stops.

24                   We want to make sure that, basically,  
25 somebody is there that we can call and talk to and

1 go see and make sure that the noise is dealt with  
2 accordingly.

3 HEARING OFFICER VALKOSKY: Okay. Thank  
4 you. The point's understood. Anything further on  
5 the topic of noise? Seeing nothing, we'll close  
6 the record on that topic. Which leaves us with  
7 the sole topic on air quality. Is there anybody  
8 here that would like to offer general public  
9 comment that does not pertain to air quality?

10 Okay, fine. At this point I'd like to  
11 take a five minute recess, and pick up on air  
12 quality when we return.

13 (Off the record.)

14 HEARING OFFICER VALKOSKY: On the  
15 record, please.

16 MS. WARREN: You've been sworn in?  
17 Witness has been sworn in, and remains under oath.  
18 Mr. Rubenstein, I know previously you gave a brief  
19 overview of some of your qualifications. Can you  
20 expand on that and provide your educational  
21 experience as it applies to the air quality topics  
22 you're going to testify to today?

23 MR. RUBENSTEIN: Given the lateness of  
24 the hour I will expand briefly. I have a Bachelor  
25 of Science degree in Engineering from CalTech. I

1 have approximately 30 years worth of professional  
2 experience in the field. I have testified in a  
3 large number of Energy Commission citing cases,  
4 which are listed in my prefiled written testimony.

5 MR. WESTERFIELD: I'm sorry, can I  
6 interrupt a moment? Staff never did move it's  
7 exhibits into evidence under noise.

8 HEARING OFFICER VALKOSKY: I'm sorry.  
9 I'll take the blame for that oversight. IF we  
10 could pause for just a second, Ms. Warren?

11 MS. WARREN: Certainly.

12 MR. WESTERFIELD: Well, staff moves into  
13 evidence both the appropriate sections of exhibit  
14 22, with reference to noise, and the supplemental  
15 testimony of Mr. Baker that's a part of exhibit  
16 26.

17 MS. WARREN: Is there objection, Ms.  
18 Warren?

19 MS. WARREN: No objection.

20 HEARING OFFICER VALKOSKY: Mr. Sarvey?

21 MR. SARVEY: No objection.

22 HEARING OFFICER VALKOSKY: Those  
23 exhibits are received, and again thank you for  
24 calling it to my attention.

25 MR. WESTERFIELD: Thank you. And sorry,

1 Mr. Rubenstein.

2 HEARING OFFICER VALKOSKY: Continue Ms.  
3 Warren.

4 MS. WARREN: Certainly. And just to  
5 clarify, your testimony is set forth, your pre-  
6 file testimony is set forth in exhibit 25 under  
7 the air quality section, starting on page 4, is  
8 that correct?

9 MR. RUBENSTEIN: That's correct.

10 MS. WARREN: And was this testimony  
11 prepared by you or at your direction?

12 MR. RUBENSTEIN: Yes it was.

13 MS. WARREN: Do you have any additions,  
14 corrections or clarifications to that pre-file  
15 testimony?

16 MR. RUBENSTEIN: Yes, I have two minor  
17 corrections to make. The first is located on page  
18 11 of my pre-file testimony. In the second full  
19 paragraph, the second to the last line, there's  
20 the phrase "the proposed 2 ppm NOX emission  
21 limit." That should more correctly read "2.5 ppm  
22 NOX emission limit."

23 All the analyses that I prepared and all  
24 the staff analyses are prepared with the correct  
25 number, that's a simple typographic error. And

1 the second correction is on page 22 of my  
2 testimony, which is a listing of prior filings.

3 If you go down in the first main group,  
4 the second from the bottom says "data responses  
5 set 7", that should more correctly say "informal  
6 data responses set 7."

7 MS. WARREN: Your testimony does  
8 incorporate a number of exhibits. It's been the  
9 practice so far today to identify and read in each  
10 of those exhibits. Because there are quite a  
11 number of them, and they are listed as an  
12 attachment to that portion of the testimony, would  
13 you like me to go ahead and read them all in, or  
14 just fill in the numbers where they were missing  
15 in the attachment?

16 HEARING OFFICER VALKOSKY: Just fill in  
17 the numbers, we've got the attachment very nicely  
18 laid out.

19 MS. WARREN: Okay. Then I'll ask Mr.  
20 Rubenstein to please, instead of reading your  
21 entire list, can you just identify those exhibits  
22 that were not assigned numbers prior to today, and  
23 provide those numbers, just so we all have that  
24 for the record?

25 MR. RUBENSTEIN: Yes. The one that I

1 just referenced, data responses set 7, is exhibit  
2 28. Continuing down, the letter dated April 23rd  
3 is exhibit 29; the letter dated April 24th is  
4 exhibit 30, 3-0; the letter dated May 13th, from  
5 Sierra Research, is exhibit 31; the letter dated  
6 June 12th from MID is exhibit 32; the letter dated  
7 May 14th from the San Joaquin Valley APCD is  
8 exhibit 33; the letter dated July 30th from the  
9 San Joaquin Valley APCD is exhibit 34; the  
10 document entitled "environmental review doc  
11 guidelines" is exhibit 35; and the document  
12 entitled "guide for assessing and mitigating air  
13 quality impacts" is exhibit 36.

14 MS. WARREN: Thank you. To the best of  
15 your knowledge are all the facts contained in your  
16 testimony, including the reference documents, true  
17 and correct?

18 COMMISSIONER ROSENFELD: Yes they are.

19 MS. WARREN: Do the opinions contained  
20 in the testimony represent your best professional  
21 judgment?

22 MR. RUBENSTEIN: Yes they do.

23 MS. WARREN: And do you adopt this  
24 testimony as your testimony in this proceeding?

25 MR. RUBENSTEIN: Yes.

1 MS. WARREN: Could you please  
2 summarize --

3 HEARING OFFICER VALKOSKY: Just one  
4 second, Ms. Warren, before we get to that. I  
5 don't have copies of exhibits 35 or 36, and I  
6 frankly don't know about the other parties.

7 MS. WARREN: You are, as we speak, being  
8 handed copies. And I believe we had made copies  
9 available.

10 HEARING OFFICER VALKOSKY: Fine. Does  
11 staff have copies of exhibits 35 and 36? I see a  
12 negative sign. Mr. Sarvey, how about you?

13 MR. SARVEY: No, sir, I do not.

14 MS. WARREN: Those are websites, and we  
15 also have floppy discs with them on it that we can  
16 provide. Both are available by website listed in  
17 the testimony.

18 HEARING OFFICER VALKOSKY: Okay,  
19 continue. Staff, and Mr. Sarvey, do the disc  
20 copies suffice for your purposes?

21 MR. WESTERFIELD: I'm sorry, I didn't --

22 HEARING OFFICER VALKOSKY: Or, what I'm  
23 asking is, do you want a paper copy?

24 MR. WESTERFIELD: We would like a paper  
25 copy.

1 HEARING OFFICER VALKOSKY: Mr. Sarvey?

2 MR. SARVEY: Yes, I would too, please.

3 MS. WARREN: Is is sufficient to forward  
4 that to you tomorrow, or should we take a recess  
5 to put the photocopy machines into business  
6 tonight?

7 MR. WESTERFIELD: Are you going to use  
8 this tonight?

9 MS. WARREN: Not significantly. It  
10 depends on what questions are asked.

11 HEARING OFFICER VALKOSKY: Why don't we  
12 see how much it's used, and if we have calls for  
13 objections on it, you can object if it's used  
14 excessively, in your opinion? Okay?

15 MR. WESTERFIELD: Of course.

16 HEARING OFFICER VALKOSKY: Mr. Sarvey,  
17 is that acceptable?

18 MR. SARVEY: Sure, why not.

19 HEARING OFFICER VALKOSKY: All right.  
20 Proceed.

21 MS. WARREN: Mr. Valkosky, we are going  
22 to go up and try to produce some copies as we  
23 speak. Again, on direct testimony it's not  
24 referred to directly, it's only going to be  
25 included as a reference item.



1           You know, my somewhat weasely response  
2   to Mr. Westerfield's question was that I cannot of  
3   course anticipate what questions may come about  
4   this. But for the direct it should not arise, and  
5   in the meantime, while we're going through the  
6   direct, we'll be attempting to print out copies.

7           HEARING OFFICER VALKOSKY: Okay. Thank  
8   you for that clarification, Ms. Warren. As I say,  
9   we will hold to the end the admission of the  
10  document at this time. And on behalf of the  
11  parties I do appreciate your making paper copies  
12  available at this time.

13          MS. WARREN: I think I was at the point  
14  of asking Mr. Rubenstein if he would adopt such  
15  testimony as has been referenced from exhibit 25  
16  as your testimony in this proceeding?

17          MR. RUBENSTEIN: Yes I do.

18          MS. WARREN: And could you please  
19  summarize your testimony?

20          MR. RUBENSTEIN: Yes. I reviewed the  
21  air quality impacts of the proposed MEGS project,  
22  and confirmed that the project would comply with  
23  all applicable laws, ordinances, regulations and  
24  standards, and with the mitigation proposed by the  
25  Applicant would not result in any significant

1 unmitigated air quality impacts.

2 With respect to LORS, there are three  
3 basic requirements that the project has to comply  
4 with. The first is the San Joaquin Valley Air  
5 District's requirement for best available control  
6 technology.

7 The project will be equipped with  
8 selective catalytic reduction and oxidation  
9 catalyst systems, and will meet the emission  
10 limits that we expect the San Joaquin Air District  
11 will require as best available control technology.

12 In addition, an air quality impact  
13 analysis prepared for the project shows that the  
14 project will comply with all the applicable  
15 requirements related to those impacts.

16 And finally, the project will provide  
17 emission offsets in the quantities and F types  
18 required by the San Joaquin Air District.  
19 Consequently, all the air district's requirements  
20 will be satisfied.

21 In addition to looking at compliance by  
22 the project with LORS, we looked at the air  
23 quality impacts in the context of the California  
24 Environmental Air Quality Act. That review  
25 included looking at those impacts from two

1 perspectives, both local and regional air quality  
2 impacts.

3 Our analysis of the local air quality  
4 impacts included three components. The first is  
5 best available control technology, because the  
6 best way to ensure that a project's localized  
7 impacts are minimized is to ensure that it uses  
8 the best technology available. As discussed  
9 above, this project will.

10 Second is the performance of an air  
11 quality impact analysis. That analysis was  
12 performed using extremely conservative  
13 assumptions. Those assumptions included operation  
14 of the plant. Both units, for 8760 hours per year  
15 at full load.

16 It also included looking at worst case  
17 meteorological conditions, and it included worst-  
18 case background air quality conditions, even if it  
19 was not physically possible for all three of those  
20 to occur at the same time.

21 The results of that analysis indicated  
22 that the project, by itself, would not create any  
23 violations of any state or federal air quality  
24 standards.

25 The third element of our local analysis

1 was a screening level health risk assessment.  
2 That health risk assessment showed that, as a  
3 worst-case, using the same extremely conservative  
4 assumptions, the project would not result in any  
5 significant health risk at any location under any  
6 weather conditions.

7 As a result, our conclusion was that the  
8 project would result in no significant localized  
9 air quality impacts.

10 In addition, we took a look at the  
11 project's contribution to regional air quality.  
12 That analysis also included three components. The  
13 first, once again, is the use of best available  
14 control technology, because the best way to  
15 minimize the project's contribution to existing  
16 air pollution levels is to ensure that it uses the  
17 best technology available, and as I indicated  
18 earlier this project does do that.

19 The second was a cumulative air quality  
20 impact analysis, and two different forms of that  
21 analysis were prepared for the project. The first  
22 was an analysis that takes the maximum project air  
23 quality impacts and adds them to the worst-case  
24 existing background levels.

25 That analysis showed that, with two

1 exceptions, the project will not cause or  
2 contribute to violations of any state or federal  
3 air quality standards, even including background  
4 concentrations, which represent the contributions  
5 from other air quality sources in the area.

6           The two exceptions were that the project  
7 will contribute to a small degree to existing  
8 violations of the state and federal air quality  
9 standards for PM-10 and for ozone. Those  
10 conclusions are not unique, most projects  
11 constructed in California contribute to existing  
12 violations of standards for those two pollutants.

13           In order to mitigate the project's  
14 contribution to those regional impacts for those  
15 pollutants, the project is required by the air  
16 district to provide emissions offsets. In  
17 addition, we've performed an analysis using  
18 criteria that the staff has developed for  
19 evaluating the adequacy of mitigation under CEQA.

20           Both of those analyses show that the  
21 offsets that are being provided will be sufficient  
22 to mitigate the project's cumulative impacts to  
23 regional air quality. As a result, with that  
24 mitigation, I believe the project will not result  
25 in any significant regional air quality impacts

1     that are left unmitigated.

2             There are two principle issues at  
3     dispute with the staff with respect to air  
4     quality. Those issues relate to mitigation  
5     conditions for construction activities related to  
6     fugitive dust, and mitigation conditions related  
7     to requirements for soot filters on construction  
8     equipment.

9             There are some other suggested changes  
10    that I have proposed to the staff's proposed  
11    conditions of exemption that are lesser in nature,  
12    and given the lateness of the hour I'll rely on my  
13    written testimony for that.

14            With respect to construction fugitive  
15    dust, the issue is discussed in detail in my pre-  
16    file written testimony. In short, though, my  
17    opinion is that there is no justification for most  
18    of the staff's requirements related to  
19    construction fugitive dust.

20            I believe, based on a detailed review  
21    and a comparison of the staff's proposed  
22    conditions with the requirements of San Joaquin  
23    Air Districts Regulation 8, that Regulation 8 is  
24    adequate to ensure that dust impacts during  
25    construction are mitigated. I base that judgment,

1 as I said, on a detailed comparison, line by line,  
2 item by item, that's included in my written  
3 testimony.

4 There are two additional mitigation  
5 conditions that I propose in addition to  
6 compliance with Regulation 8 that I believe would  
7 strengthen them.

8 Those are also detailed in my testimony,  
9 and they include keeping the requirement that's in  
10 condition AQC1, with respect to having an onsite  
11 air quality construction mitigation manager, and  
12 the requirement that I believe is in AQC2, with  
13 respect to preparation of construction mitigation  
14 plan.

15 I believe those two requirements are  
16 important additions to San Joaquin District  
17 Regulation 8. My testimony in this proceeding is  
18 consistent with an analysis that our firm prepared  
19 for the San Joaquin Air District that is included  
20 in the current PM-10 air quality plan that was  
21 adopted by the district earlier this year.

22 And recommended additional enforcement  
23 capabilities and in particular additional planning  
24 requirements to strengthen Regulation 8. And the  
25 air district has adopted those recommendations.

1     So again, as a matter of consistency, I believe it  
2     would be appropriate, since the air district has  
3     not yet amended the rules, to have the same  
4     requirements here.

5             What I've just discussed is identified  
6     in my testimony as alternative 1, which is a set  
7     of conditions that begins on page 25 of my written  
8     testimony. In addition to alternative 1 in my  
9     written testimony, I've proposed two further  
10    alternatives for the Committee to consider in the  
11    event that you believe conditions redundant with  
12    those contained in Regulation 8 are in fact  
13    necessary for this project.

14            Alternative 2, as I discuss in my  
15    testimony, is simply a restatement of the  
16    requirements that were imposed on the recently  
17    constructed Woodland generating station unit 2.

18            In that particular case, because that  
19    project was constructed by the same Applicant in  
20    fairly recent time, without any problems that I'm  
21    aware of related to construction fugitive dust  
22    impacts, I believe that those conditions should be  
23    adequate for this project as well, if the  
24    Committee believes that something in addition to  
25    Regulation 8 is required.



1           Finally, as alternative 3 in my  
2 testimony, which begins at page 34, I have  
3 presented a markup of the staff's testimony to  
4 make the proposed dust mitigation conditions  
5 consistent with those that have been accepted by  
6 staff or by the Commission in previous siting  
7 cases.

8           However, as I said, my primary  
9 recommendation is that I don't believe these dust  
10 conditions are necessary, that I believe that  
11 Regulation 8 is sufficient with the addition of  
12 conditions AQC1 and 2 relating to the construction  
13 mitigation manager, and the requirement to prepare  
14 a dust mitigation plan.

15           The second principle issue that we  
16 have with the staff's final initial study is  
17 related to the use of soot filters. The issue in  
18 this particular case is quite simple. The  
19 Applicant did not assume the use of soot filters  
20 on any construction equipment in its analyses.

21           The analyses prepared by both the  
22 Applicant and the staff show that diesel exhausts,  
23 particulate emissions from construction equipment  
24 do not present any significant health risk.  
25 Consequently, no additional mitigation for this

1 source is required.

2           Consequently I believe the only  
3 conditions that should be required regarding  
4 exhaust emissions from construction equipment are  
5 conditions that would enforce the two key  
6 assumptions that were made in our analysis.

7           And those two key assumptions are the  
8 use of 1996 and later certified engines for  
9 construction equipment to the extent available,  
10 and a requirement to use ultra-low sulfur diesel  
11 fuel for all constructions activities.

12           Those are the only two assumptions we  
13 used. The impacts analysis showed there were no  
14 significant impacts. consequently I believe that  
15 no additional mitigation is necessary.

16           And that concludes my discussion of the  
17 two issues that are at dispute between the  
18 Applicant and the staff.

19           In addition I'd like to comment on one  
20 issue that was raised by Mr. Sarvey, which has to  
21 do with the appropriate level of ammonia slip from  
22 these units. In this case there is no  
23 disagreement between the Applicant, the staff, and  
24 the staff of the air district. All three of those  
25 entities believe that 10 PPM ammonia slip level is

1 appropriate for this project.

2 The Energy Commission has approved a 10  
3 PPM slip level for many projects in the San  
4 Joaquin Valley, most recently and specifically for  
5 the Tracy Peaker Project.

6 I make specific note of the San Joaquin  
7 Valley because in my opinion the appropriate level  
8 of ammonia slip is dependent not on the technical  
9 feasibility of achieving lower levels, but rather  
10 on the demonstrated air quality needs in the area  
11 where the project is being proposed.

12 For that reason, for example I have not  
13 opposed the imposition of a five PPM slip level in  
14 the south coast air basin, because there has been  
15 a demonstrated need for additional control over  
16 ammonia emissions in that air basin. There has  
17 not been such demonstrated need in the San Joaquin  
18 Valley air basin, and for that reason I believe  
19 it's not necessary here as well.

20 Once again, I believe that it's  
21 important for there to be some linkage between  
22 mitigation that's proposed, a significant impact,  
23 and benefits that would be achieved by that  
24 mitigation. With respect to further reductions in  
25 ammonia emissions in the plant I don't think that

1 linkage has been established anywhere in the  
2 record for this proceeding.

3 In conclusion, I believe that the  
4 project will not result in any significant,  
5 unmitigated localized air quality impacts. I  
6 believe the project will not result in any  
7 significant, unmitigated regional air quality  
8 impacts.

9 I believe that the project demonstrated  
10 that it will comply with all applicable laws,  
11 ordinances, regulations and standards. I believe  
12 that, with the mitigation measures proposed by the  
13 Applicant, that the project will not result in any  
14 significant unmitigated air quality impacts  
15 related to construction, either construction of  
16 fugitive dust or construction exhaust emissions.

17 And I believe that the ammonia slip  
18 level of ten parts per million expected to be  
19 imposed by the San Joaquin Air district is  
20 appropriate for this project type and location.  
21 And that concludes my summary of my direct  
22 testimony.

23 MS. WARREN: A few followup questions on  
24 that. Are you aware of MID's intended operation  
25 of this MEGS as a peaking plant?

1 MR. RUBENSTEIN: Yes I am.

2 MS. WARREN: And you understand that MID  
3 is seeking to license the plant for 8760 hours, as  
4 has been spoken of earlier?

5 MR. RUBENSTEIN: Yes.

6 MS. WARREN: Can you explain this  
7 please?

8 MR. RUBENSTEIN: Yes. When we were  
9 first approached by MID regarding this project,  
10 one of the first questions we asked, because this  
11 was going to be a peaker project, was how much  
12 flexibility MID was going to want to seek from the  
13 air district in its air permit, because the air  
14 district permit, in my experience, is generally  
15 one of the more substantial constraints on the  
16 project's operating flexibility.

17 At that time what we heard was the same  
18 information that was presented at the  
19 informational hearing, which, in nominal terms,  
20 indicated that the plant would be running pretty  
21 much 24 hours a day in the peak summer season due  
22 to both the high air conditioning loads and the  
23 high loads from the canning operations within the  
24 irrigation district.

25 And that for the rest of the year the

1 plant would operate in the more traditional  
2 peaking mode of coming up during the day and being  
3 shut down during the night.

4 When we took a look at that, and in  
5 particular how that related to the requirements of  
6 the local air district, and also took into account  
7 some of the uncertainties involved, it became  
8 quite clear to us that the only way to ensure the  
9 plant would have the necessary operating  
10 flexibility would be to license it for 8760 hour  
11 per year.

12 Our reasoning was as follows. First,  
13 just taking a look at the nominal operating cycle  
14 that was presented to us, it would be  
15 approximately 90 days, three months, at 24 hours a  
16 day, which would be a little less than 2,200 hours  
17 per year.

18 For the balance of the year, nine  
19 months, we assumed roughly ten hours of day of  
20 peaking operation, which would be another 2,700  
21 hours per year, for a total of 4,900 hours per  
22 year out of 8760. So already we're talking about  
23 a plant that for a nominal operating cycle would  
24 be running roughly half the time, or a little bit  
25 more.

1           Next came the fact that, in the San  
2   Joaquin Air District, best available control  
3   technologies are established based on daily  
4   emissions. So that would not really be a factor,  
5   whether the plant was operated just 4,000 hours or  
6   8,000 hours, the best available control technology  
7   requirements would be exactly the same.

8           And while the trigger for emission  
9   offsets is based on annual emissions, the quantity  
10   of offsets required is based on maximum emissions  
11   during the calendar quarter. Consequently, if we  
12   proposed anything less than 8760 hours per year,  
13   we would have to allocate those hours to specific  
14   calendar quarters.

15          And while the nominal summer months of  
16   July, August and September conveniently fall  
17   within the third calendar quarter, if the canning  
18   season starts a few weeks early, or if there's a  
19   heat wave in May or June, some of that increased  
20   operation may actually occur during the second  
21   calendar quarter.

22          If the canning season runs late in a  
23   particular year, or if there's a late summer heat  
24   wave, then some of those around the clock  
25   operations could trail into the fourth calendar

1     quarter.  Consequently we would have to deal with  
2     increased levels of operations in some years in  
3     three of the four calendar quarters.

4             And in the first calendar quarter, if  
5     for example MID's Woodland Two unit needed to be  
6     shut down for an extended outage for, say, a  
7     month, it's quite possible that these units would  
8     be called on to operate in the first calendar  
9     quarter.

10            As a result, it's possible to  
11     hypothesize that during each of the four calendar  
12     quarters there would be some circumstances under  
13     which these units would be called on to operate  
14     fulltime.  And even if those circumstances only  
15     occur once or twice in 30 years, if we license the  
16     plant for less than 8760 hours per year with the  
17     air district we're going to deny MID that  
18     flexibility.

19            And that was the reason why we had  
20     recommended, even based on this nominal 50 percent  
21     annual capacity factor, that we license the plant  
22     for full operation year-round, because year to  
23     year variation doesn't allow us to predict which  
24     calendar quarters might have increased operation  
25     in some years versus others.



1 MS. WARREN: is this licensing  
2 consistent with the way other plants have been  
3 licensed?

4 MR. RUBENSTEIN: Some units that are  
5 peaking units have been licensed with operations  
6 limited to the equivalent of 4,000 hours per year.  
7 Other units, for example the Tracy Peaker Project  
8 was licensed as a peaker project, with an  
9 allowance of up to 8,000 hours per year of  
10 operation, essentially the same as what's being  
11 proposed for this project.

12 So in a very recent case, exactly the  
13 same issue was addressed, and the project was  
14 licensed and approved as a peaker at 8,000 hours  
15 per year.

16 MS. WARREN: Changing the direction a  
17 little at this point, I want to reference you to  
18 staff's testimony on page 3-29 of the final  
19 initial study. Staff discusses the 2003 PM-10  
20 plan adopted by the San Joaquin Valley Air  
21 Pollution Control district in May of 2003. Have  
22 you reviewed this plan?

23 MR. RUBENSTEIN: I have reviewed the  
24 executive summary, and I have reviewed portions of  
25 the plan related to several issues relevant to

1     this project.

2                 MS. WARREN:  Are you aware of whether or  
3     not the plan discussed issues of construction  
4     dust?

5                 MR. RUBENSTEIN:  Yes it did.

6                 MS. WARREN:  How about soot filters?

7                 MR. RUBENSTEIN:  Yes it did.

8                 MS. WARREN:  And ammonia?

9                 MR. RUBENSTEIN:  Yes it did.

10                MS. WARREN:  Can you please describe to  
11    us what the plan concluded about each of these  
12    topics?

13                MR. RUBENSTEIN:  Yes.  With respect to  
14    construction dust, the plan relied extensively on  
15    the requirements of Regulation 8.  It indicated  
16    that, as a result of best available control  
17    measure analysis, which was prepared by Sierra  
18    Research for the San Joaquin Valley Air District,  
19    that the air district intended to strengthen  
20    Regulation 8 in several areas.

21                The most significant of which, in my  
22    opinion, is the increased requirements for the  
23    preparation of dust control plans for more  
24    sources, and a commitment to increased  
25    enforcement.

1 MS. WARREN: Soot filters?

2 MR. RUBENSTEIN: With respect to soot  
3 filters, the plan referred specifically to the  
4 federal and state air pollution control programs  
5 and emission standards for diesel construction  
6 equipment, and did not make any mention whatsoever  
7 of requirements for the retrofit of soot filters  
8 to existing equipment, except in the context of a  
9 regulatory program and a risk management program  
10 currently underway by the California Air Resources  
11 Board.

12 MS. WARREN: And can you describe your  
13 understanding of the plan's approach regarding  
14 ammonia?

15 MR. RUBENSTEIN: Yes. The issue of  
16 ammonia was discussed in a fair bit of detail in  
17 the plan. And in order to understand whether  
18 further control of ammonia was required in the San  
19 Joaquin Valley Air Basin, as part of the planning  
20 effort the California Air Resources Board  
21 performed a sensitivity study, in which they  
22 assumed that ammonia emissions from all sources  
23 within the San Joaquin Valley, which are primarily  
24 agricultural sources.

25 But it assumed that ammonia emissions

1 from all sources would be reduced by 50 percent,  
2 5-0 percent. That sensitivity analysis indicated  
3 that, even with a 50 percent reduction in ammonia  
4 emissions, there would be only a slight reduction  
5 in projected ambient PM-10 levels.

6 That slight reduction occurred in the  
7 area south of Bakersfield and in the Tehachapi  
8 Mountains, and consequently the plan concluded  
9 that, because of uncertainty even over the  
10 validity of those results, that no additional  
11 reductions in ammonia emissions, or no reductions  
12 in ammonia emissions period, were necessary from  
13 any sources and again the majority of ammonia  
14 sources in the San Joaquin Valley are related to  
15 agricultural operations.

16 MS. WARREN: Can you tell us what the  
17 current status of that 2003 PM-10 plan is?

18 MR. RUBENSTEIN: Yes. That plan was  
19 approved by the California Air Resources Board in  
20 June of this year, and is at EPA, awaiting  
21 approval from that agency.

22 MS. WARREN: Thank you. Let me now  
23 refer you to staff's testimony on page 3-32 of the  
24 final initial study. There's a reference that  
25 staff makes to potential exemptions from

1 Regulation 8. That staff is concerned would  
2 nullify compliance with the requirements of the  
3 Reg 8 rules.

4 Are you aware of any exemptions  
5 applicable to the Applicant in this matter that  
6 would permit Applicant to avoid compliance with  
7 Reg 8?

8 MR. RUBENSTEIN: No. The only exemption  
9 that I found in reviewing Reg 8 was the exemption  
10 from the requirement to prepare a dust mitigation  
11 plan. That's why I recommended keeping that  
12 condition in the Commission's proposed conditions  
13 of exemption.

14 I did not see any other exemptions that  
15 the project's construction activities would comply  
16 with, so I don't really understand the basis for  
17 the staff's statement at all.

18 MS. WARREN: Thank you. That's all the  
19 questions we have for now.

20 HEARING OFFICER VALKOSKY: Thank you,  
21 Ms. Warren.

22 COMMISSIONER BOYD: Mr. Rubenstein, with  
23 regard to your explanation of soot filters, you  
24 made reference to an ARB program, pre-retrofit of  
25 offroad construction. I'm not familiar with that.

1 Can you tell me a little bit more about that?

2 I've been away from it for awhile.

3 MR. RUBENSTEIN: The Air Resources Board  
4 has, for the last several years, been very  
5 studiously and carefully looking at soot filter  
6 retrofit programs for a broad range of equipment,  
7 ranging from on-highway motor vehicles, urban  
8 vehicles such as garbage trucks and buses,  
9 refrigeration units on long-haul vehicles, and  
10 construction equipment.

11 Those activities are being performed  
12 within the backdrop of that agency's very long  
13 memory of what can happen if a retrofit program on  
14 an emission control programs doesn't work out as  
15 planned. And as a result the board has been very,  
16 very cautious in pursuing these different  
17 measures.

18 I believe actually that the measures for  
19 construction equipment are probably the furthest  
20 behind of any of them. I believe the ones that  
21 are further ahead in ARB's review are programs  
22 related to urban vehicles such as buses and  
23 garbage trucks.

24 And there has been a lot of activity  
25 with respect to refrigeration units on trucks.

1 Again, because of the location of many  
2 distribution centers in urban areas.

3 So that program is very generally  
4 underway, but they have no active programs at this  
5 point to require the retrofit of soot filters to  
6 construction equipment.

7 COMMISSIONER BOYD: Okay. That was the  
8 pat that I wasn't sure I was up to speed on or  
9 not. Having just recently sat through a whole day  
10 of alternatives to diesels at the ARB I didn't  
11 remember hearing -- I heard a lot about technology  
12 and retrofitting soot filters and various  
13 vehicles.

14 But I did not pick up much in offroad.  
15 But, realizing I don't live with this every day  
16 anymore, I just wanted to be updated. Thank you.

17 HEARING OFFICER VALKOSKY: Mr.  
18 Rubinstein, are air pollutant offsets being used  
19 for this project?

20 MR. RUBENSTEIN: Yes they are.

21 HEARING OFFICER VALKOSKY: What are the  
22 pollutants, and what is the ratio that is being  
23 used?

24 MR. RUBENSTEIN: For this project we  
25 propose to use reductions in emissions of sulfur

1     dioxide to provide offsets for increase in  
2     emissions of PM-10. We had provided an analysis  
3     to the San Joaquin Air district, which recommended  
4     an interpollutant ratio of one to one.

5             And that analysis is included amongst  
6     the prior filings that I've listed in my  
7     testimony.

8             It's my understanding, although I  
9     haven't seen this in writing, that the San Joaquin  
10    Air District has concluded that the appropriate  
11    ratio should be 1.2 to one instead of 1.0 to one,  
12    and with that qualification it's my understanding  
13    that they will be approving that interpollutant  
14    trade.

15            HEARING OFFICER VALKOSKY: At the 1.2 to  
16    one ratio, does Applicant currently possess  
17    sufficient PRC's?

18            MR. RUBENSTEIN: Yes it does. We have  
19    not provided that demonstration in the record of  
20    this proceeding because that ratio has not been  
21    formally established. But we have done the  
22    calculations and the answer is yes.

23            HEARING OFFICER VALKOSKY: Okay. I'd  
24    like to direct your attention to alternative three  
25    of your testimony, your various conditions. It's



1 on pages 34 to 37. I just want to make sure I'm  
2 understanding this correctly.

3 I understand your objections to the  
4 various measures that staff has proposed, but am I  
5 also to understand that, with the corrections  
6 reflected here in alternative three, these  
7 conditions would be acceptable to Applicant?

8 MR. RUBENSTEIN: Yes they would be.

9 HEARING OFFICER VALKOSKY: I take it the  
10 correction to AQC3 is solely for clarity, to  
11 define sufficiently wet -- is that the purpose of  
12 it?

13 MR. RUBENSTEIN: I believe so, I'm not  
14 sure that's the staff's position.

15 HEARING OFFICER VALKOSKY: Right. I'm  
16 asking for your understanding.

17 MR. RUBENSTEIN: Yes. It is to clarify  
18 what the meaning of what sufficiently wet is.

19 HEARING OFFICER VALKOSKY: And for --  
20 well, the condition appearing on page 36, the  
21 defining not available and not practical is to  
22 reflect the language that was included in East  
23 Altamount, after some difficulty I believe, is  
24 that correct?

25 MR. RUBENSTEIN: That's correct.

1           HEARING OFFICER VALKOSKY: Okay. Now  
2     directing you to the last paragraph on page 36, to  
3     my reading -- and I'm not expressing a preference  
4     for either version -- but it seems to me that the  
5     material which is struck out is essentially the  
6     same in meaning as that which you propose adding.

7           Is that your understanding? Is it just  
8     for clarity, or are you somehow changing some  
9     meaning?

10          MR. RUBENSTEIN: No, I don't believe  
11     ther's a substantive difference between Applicant  
12     and staff. When I read staff's proposed language,  
13     and in particular the language that was struck  
14     out, I could not see the clear statement to that.  
15     If compliance with a requirement of staff  
16     precluded compliance with requirement of the  
17     district, that the district rule would govern.

18          HEARING OFFICER VALKOSKY: Right. So  
19     you're suggested change is basically for clarity,  
20     in your view?

21          MR. RUBENSTEIN: Yes.

22          HEARING OFFICER VALKOSKY: Finally, in  
23     understanding your position on staff's mitigation,  
24     is it your opinion that the implementation of  
25     staff's mitigation would increase the air quality

1 impacts of the project?

2 MR. RUBENSTEIN: No, because even if the  
3 staff's proposals are less stringent than the  
4 district's, as may be the case in some aspects,  
5 the district's requirements will govern. And  
6 consequently the more stringent requirements will  
7 be satisfied.

8 HEARING OFFICER VALKOSKY: Okay. Thank  
9 you. Mr. Westerfield.

10 MR. WESTERFIELD: Thank you. I just  
11 have a few questions, Mr. Rubenstein. Why don't  
12 we turn to page 12 of your testimony.

13 And at the bottom of the page, where you  
14 cite to the district's guidance, and specifically  
15 I'm referring to, I guess the last two sentences,  
16 beginning with table 6-3 pertaining to the  
17 enhanced and additional control measures, and then  
18 to the following sentence. Do you see that?

19 MR. RUBENSTEIN: Yes.

20 MR. WESTERFIELD: It seems to refer or  
21 say that the district will recommend enhanced and  
22 additional measures when project conditions  
23 warrant, such as the potential for impacting  
24 sensitive preceptors and so forth. What is the  
25 standard that the district uses to find that

1 additional measures are warranted?

2 In other words, how do you know when  
3 those additional measures are going to be  
4 implemented?

5 MR. RUBENSTEIN: I believe that would  
6 probably be better directed to the district, but I  
7 expect it would be when the district provides  
8 comments on an EIR, since that's the purpose of  
9 this document is guidance to various agencies  
10 regarding the air quality impacts of projects.

11 MR. WESTERFIELD: If I understand your  
12 testimony I think your general position is that  
13 Regulation 8 is sufficient to mitigate any PM-10  
14 impacts created by construction, and that the  
15 additional mitigation proposed by staff is not  
16 necessary, is that correct?

17 MR. RUBENSTEIN: Yes.

18 MR. WESTERFIELD: So how does staff know  
19 that this application of Regulation 8 is going to  
20 be done, how do we know when it's going to be  
21 used?

22 MR. RUBENSTEIN: How do you know when  
23 Regulation 8 is going to be used?

24 MR. WESTERFIELD: Well, how do we know  
25 that the district is going to recommend enhanced

1 and additional measures when project conditions  
2 warrant. What's the trigger?

3 MR. RUBENSTEIN: I'm sorry, I'm a little  
4 bit confused. One is how do we know when  
5 Regulation 8 is going to be used, and the --

6 MR. WESTERFIELD: No, that's not my  
7 question.

8 MR. RUBENSTEIN: Okay, perhaps you could  
9 repeat the question for me?

10 MR. WESTERFIELD: How do we know when  
11 the district will recommend these enhanced and  
12 additional measures when project conditions  
13 warrant?

14 MR. RUBENSTEIN: As I said, when I  
15 answered the question earlier, I think that you  
16 would first be best off to ask that question of  
17 the district, but I believe that you will know  
18 when the district recommends that in response to  
19 an EIR or negative declaration that's proposed by  
20 another lead agency.

21 MR. WESTERFIELD: Well, I appreciate  
22 that, and maybe I'll get a chance to ask the  
23 district that question, but right now I'd like to  
24 ask you that question?

25 MR. RUBENSTEIN: I just answered it.

1           MR. WESTERFIELD: And what is your  
2 answer again, for the record?

3           MR. RUBENSTEIN: You will know when the  
4 district submits comments on a proposed EIR or  
5 negative declaration for a project.

6           MR. WESTERFIELD: All right. So that is  
7 the assurance that you are giving staff, that the  
8 district will recommend additional measures to  
9 control PM-10.

10          MR. RUBENSTEIN: No, I did not say that.

11          MR. WESTERFIELD: Well, let's start  
12 again.

13          HEARING OFFICER VALKOSKY: Okay, let's  
14 make this the last time. Go ahead.

15          MR. WESTERFIELD: I'm trying to get a  
16 responsive answer.

17          HEARING OFFICER VALKOSKY: I understand.

18          MR. WESTERFIELD: It's your testimony  
19 here that, in certain instances the district will  
20 recommend enhanced control measures when project  
21 conditions warrant. Isn't that true, isn't that  
22 what you say?

23          MR. RUBENSTEIN: I don't say that  
24 independently. I just quote the district's  
25 document.

1           MR. WESTERFIELD: And how is staff to  
2 know under what conditions the district will  
3 implement those enhanced and additional control  
4 measures. What is the standard that triggers  
5 those additional control measures?

6           MR. RUBENSTEIN: I don't know, but as I  
7 say on the following page of my testimony, I  
8 believe that those enhanced control measures are  
9 already going to be performed as part of the  
10 project's compliance with Regulation 8.

11          MR. WESTERFIELD: You repeatedly mention  
12 that Regulation 8 has a 20 percent visible dust  
13 emission requirement, is that right?

14          MR. RUBENSTEIN: Yes.

15          MR. WESTERFIELD: What measures exist in  
16 Regulation 8 for monitoring dust emissions to  
17 ensure that that requirement is met?

18          MR. RUBENSTEIN: There are three aspects  
19 to this. The first is in rule 8011, section 6.2,  
20 recordkeeping requirements, which requires that an  
21 owner or operator subject to the requirements of  
22 Regulation 8 must maintain documents of all  
23 inspections and observations to verify compliance  
24 on all days that control measures are issued.

25                 Second is appendix A, 008011, which

1 specifically identifies the methods to be used for  
2 determining the opacity of dust.

3 And then the third requirement is, I  
4 believe, in rule 8021, section 6.23, which is the  
5 requirement for preparation of a dust control  
6 plant which, because of the small size of this  
7 project, would not be triggered for this project,  
8 which is why I had recommended retaining  
9 conditions AQC1 and AQC2 as a substitute.

10 MR. WESTERFIELD: Okay. so it sounds  
11 like three is not applicable to this project  
12 because of size?

13 MR. RUBENSTEIN: That's correct.

14 MR. WESTERFIELD: And one is a record-  
15 keeping requirement.

16 MR. RUBENSTEIN: Yes.

17 MR. WESTERFIELD: And so two is a method  
18 for determining opacity?

19 MR. RUBENSTEIN: Yes.

20 MR. WESTERFIELD: Okay. So is there, as  
21 part of this regulation, a monitoring requirement  
22 by the district to ensure that the 20 percent  
23 opacity limit is not exceeded, which I assume  
24 would be part of appendix A to rule 8011?

25 MR. RUBENSTEIN: No, I believe that's in



1 rule 8011, section 6.2, under the record-keeping  
2 requirements. Because you're required to maintain  
3 sufficient records to demonstrate compliance, and  
4 that includes records of observations that you've  
5 made.

6 MR. WESTERFIELD: Okay. So tell me  
7 again, is there a requirement to monitor  
8 compliance with the 20 percent capacity  
9 requirement?

10 MR. RUBENSTEIN: I'm struggling, because  
11 I thought I've answered this question twice  
12 before. I believe the provisions are in rule  
13 8011, section 6.2.

14 MR. WESTERFIELD: 6.2. And what are  
15 those requirements for the monitoring opacity?

16 MR. RUBENSTEIN: That a person subject  
17 to the rule must maintain records, and any other  
18 supporting documents, to demonstrate compliance  
19 with the requirements of the rules on those days  
20 that a control measure is implemented.

21 MR. WESTERFIELD: Is that it? Is that  
22 all of it?

23 MR. RUBENSTEIN: Yes, it's a lot more  
24 than what's in the staff's conditions.

25 THE WITNESS: All right. That's great.

1 That's all I have.

2 HEARING OFFICER VALKOSKY: Mr. Sarvey?

3 MR. SARVEY: You stated earlier that you  
4 had reviewed the San Joaquin Valley Control  
5 District PM-10 attainment plan that's been  
6 proffered recently and approved by CARB. I want  
7 to read to you, on page ES14, and I'd like to know  
8 if you'd read this portion of the document.

9 It says "no ammonia controls are  
10 proposed for immediate implementation in the PM-10  
11 plan. However, the district is committed to  
12 pursuing an expeditious ammonia control strategy  
13 in light of the uncertainty regarding ammonia  
14 emission controls to achieve attainment -- and I  
15 emphasize uncertainty -- the PM-10 plan includes a  
16 strategy to further assess and develop any needed  
17 control for ammonia sources."

18 Did you read that, Mr. Rubenstein?

19 MR. RUBENSTEIN: Yes I did. I read  
20 several other things in there. Would it be  
21 possible for you to share a copy of that document  
22 with us?

23 MR. SARVEY: I've only got this, you're  
24 welcome to look at it.

25 HEARING OFFICER VALKOSKY: Do you want

1 it now, Mr. Rubenstein?

2 MR. RUBENSTEIN: Only if he's going to  
3 ask me any more questions about it.

4 HEARING OFFICER VALKOSKY: Okay. Mr.  
5 Sarvey, are you going to?

6 MR. SARVEY: That was the only question  
7 that I had on that document. I just wondered if  
8 he'd read that. He made a statement that ammonia  
9 wasn't an important precursor, and if you reduced  
10 ammonia by such-and-such, and I was just trying to  
11 see if he understands the other side of the coin  
12 on that. Thank you.

13 Okay. Now how much do you know about  
14 ammonia concentrations as an asthma trigger? Is  
15 that a field that you're familiar with?

16 MR. RUBENSTEIN: No it's not.

17 MR. SARVEY: So you wouldn't know at  
18 what level additional ammonia in an ammonia-rich  
19 area could possibly trigger asthma?

20 MR. RUBENSTEIN: No.

21 MR. SARVEY: Is a five ppm ammonia slip  
22 level feasible for this project?

23 MR. RUBENSTEIN: I'm not sure that it is  
24 over an extended period of time.

25 MR. SARVEY: If this project were in an

1 ammonia limited area, earlier you said you would  
2 recommend a five ppm ammonia slip. Are you  
3 revising that statement?

4 MR. RUBENSTEIN: No. If this project  
5 were located in an area where BACT for ammonia was  
6 five parts per million I'm not sure I'd recommend  
7 this combustion turbine technology.

8 To the best of my recollection the  
9 projects in the south coast air basin that use  
10 LM6000 gas turbines with water injection in simple  
11 cycle are having a great deal of difficulty  
12 meeting a five ppm slip level on a consistent  
13 basis.

14 MR. SARVEY: Have you performed any  
15 tests or modeling to confirm that the project area  
16 is ammonia rich?

17 MR. RUBENSTEIN: I'm hesitating because  
18 I don't think I've done that in the context of  
19 this project. I have done that in the context of  
20 other projects, looking at this general area.

21 MR. SARVEY: So you're not certain. Is  
22 it possible that the ammonia could be transported  
23 to a region that is not ammonia-rich?

24 MR. RUBENSTEIN: In theory, yes. But in  
25 the case of this project I don't believe so,

1 particularly given the analysis that's contained  
2 in the San Joaquin Valley's PM-10 plan.

3 MR. SARVEY: Is the Applicant providing  
4 offsets for SO2 emissions?

5 MR. RUBENSTEIN: The Applicant is  
6 mitigating its SO2 emissions, yes.

7 MR. SARVEY: In your testimony on page 7  
8 you indicate that there's been only one exceedance  
9 of the federal ozone standard in Modesto since  
10 1998.

11 MR. RUBENSTEIN: Yes, I see that  
12 statement.

13 MR. SARVEY: Are you aware that, during  
14 that same time period, there has been 16 to 13  
15 exceedances of the federal 8 hour ozone standard,  
16 in Modesto?

17 MR. RUBENSTEIN: I did not look at that  
18 statistic, that would not surprise me.

19 MR. SARVEY: Okay. Would you agree that  
20 the project's ozone impacts are regional in  
21 nature?

22 MR. RUBENSTEIN: Yes I would.

23 MR. SARVEY: So since the projects ozone  
24 impacts are regional in nature, shouldn't we be  
25 looking at ozone exceedances in San Joaquin

1 Valley, not Modesto?

2 MR. RUBENSTEIN: The Commission's  
3 practice, and I believe Mr. Sarvey your own  
4 testimony in other proceedings, has encouraged the  
5 use of air quality levels as close to a project  
6 site as possible to characterize the existing air  
7 quality, and what we've done in this case is  
8 consistent with past practice by the Commission.

9 MR. SARVEY: So you would agree that  
10 it's real important to look at ozone exceedances  
11 in San Joaquin Valley as well as Modesto then?

12 MR. RUBENSTEIN: Our analysis does that,  
13 because if one were to evaluate whether offsets  
14 were required based just on the readings in  
15 Modesto one might reach a different conclusion.

16 But in fact offsets are required because  
17 the entire San Joaquin Valley air basin is non-  
18 attainment for ozone with respect to both state  
19 and federal standards. Consequently, whether we  
20 look, as you say, at ozone levels in other parts  
21 of the basin is not relevant, because we have  
22 mitigated those impacts on a regional basis.

23 MR. SARVEY: So, are you aware that San  
24 Joaquin Valley has had the most exceedances of the  
25 state one hour standard, and the most exceedances

1 of the federal 8 hour standard for 2001 and 2002?

2 MR. RUBENSTEIN: I'm sorry, Bob, I  
3 haven't memorized those pages out of the CARB  
4 almanac, but I'm sure you're going to show them to  
5 me.

6 MR. SARVEY: You're right, I am. Okay.  
7 Did you know there were 125 violations of the  
8 national 8 hour ozone standard in the San Joaquin  
9 Valley, the highest in ten years, the highest  
10 number of violations in ten years?

11 MR. RUBENSTEIN: I'm sorry, could you  
12 repeat that again?

13 MR. SARVEY: Did you know that there  
14 were 125 violations of the national 8 hour ozone  
15 standard in San Joaquin Valley, the highest number  
16 of exceedances in ten years?

17 MR. RUBENSTEIN: No, I'd have to say I  
18 didn't know that until you just handed this chart  
19 to me.

20 MR. SARVEY: Okay. In both Stockton and  
21 Merced, violations of the state PM-10 standard are  
22 the highest they have been in the last eight  
23 years. Were you aware of that?

24 MR. RUBENSTEIN: We're switching now  
25 from ozone to PM-10?

1 MR. SARVEY: Yes sir.

2 MR. RUBENSTEIN: I don't see that you've  
3 handed me a PM-10 history for ten years. Am I  
4 missing something?

5 MR. SARVEY: Last eight years. This is  
6 your exhibits from your letter of August 6th to  
7 the pollution control district, your  
8 interpollutant offset, that's your exhibit.  
9 Exhibit 21, page 18.

10 MR. RUBENSTEIN: Okay, I was hung up on  
11 the 10 year issue. Can you repeat your statement  
12 again?

13 MR. SARVEY: Sorry, Gary.

14 MR. RUBENSTEIN: That's all right.

15 MR. SARVEY: Were you aware that in the  
16 last eight years that they've had the highest  
17 number of exceedances for state PM-10 violations  
18 in both Stockton, Hazelton, and Modesto as well,  
19 although Modesto is only six years. That's all  
20 the recorded information we have.

21 MR. RUBENSTEIN: The number of  
22 exceedances?

23 MR. SARVEY: The highest number of  
24 exceedances. It went from 18 in 1995 to 60 at  
25 Stockton. In Modesto it went from 12 in 1996 to



1 78 in 2002.

2 MR. RUBENSTEIN: And the third Stockton,  
3 or the other Stockton station actually had its  
4 peak in 2000, but yes, I see those statistics.  
5 They are all in our August 6th letter to the air  
6 district.

7 MR. SARVEY: Now, considering the  
8 increases in violations that I've shown you in the  
9 last few statements, and in the handout that I've  
10 given you, would you agree that it's important  
11 that we use the most stringent control measures  
12 possible for this project?

13 MR. RUBENSTEIN: I think there are two  
14 aspects to that. One is should we use the best  
15 available control technology for PM-10, and I  
16 think the answer is yes, and I believe we do.

17 And the second is should we be  
18 mitigating the project's contribution to ambient  
19 PM-10 levels, and the answer is yes, and I believe  
20 we do.

21 MR. SARVEY: Ozone as well. You earlier  
22 mentioned the Tracy peaker plant was recently  
23 certified for 8,000 hours of operation. And I'm  
24 sure you're aware that the Applicant in that  
25 project, due to community response and a little

1 prodding from Commissioner Pernell, has reduced  
2 his operating hours to 6,000, and that most of the  
3 public thought that was an unreasonable amount of  
4 hours for a peaker to operate.

5 Does this Applicant intend to do the  
6 same?

7 MR. RUBENSTEIN: No, and actually I'm  
8 looking right at the condition that was imposed on  
9 that project and it specifically indicates that  
10 condition that they look at reducing their hours  
11 was not required to mitigate a significant impact  
12 under CEQA.

13 MR. SARVEY: It's part of our community  
14 benefits agreement. So looking at your  
15 interpollutant offset ratio for this project, from  
16 your August 6th letter, which would be exhibit 21  
17 I believe, you have this table labeled SO2 to PM-  
18 10 interpollutant offset ratio analysis. Isn't  
19 that correct?

20 MR. RUBENSTEIN: Yes.

21 MR. SARVEY: Okay, now when you analyze  
22 the sulfate you use SO4 instead of SO2. Should  
23 this table be more correctly labeled SO4 to PM-10  
24 interpollutant offset ratio?

25 MR. RUBENSTEIN: No. We correctly moved

1     between SO2 and SO4 depending on whether we're  
2     talking about emissions or air quality  
3     measurements. So we've properly counted for the  
4     condition in molecular waste.

5             MR. SARVEY: So you've taken care of the  
6     molecular waste?

7             MR. RUBENSTEIN: Yes.

8             MR. SARVEY: Very good. Why is the  
9     interpollutant ratio so different in this project,  
10    1997-1998, when your same firm did the  
11    interpollutant ratio in the peaker analysis for  
12    the Tracy peaker and it was 2.1 for both years.

13            Where's the difference, as far as  
14    arriving at those numbers?

15            MR. RUBENSTEIN: The fundamental  
16    difference is that in the analyses that were done  
17    not only for the Tracy Peaker Project, but for I  
18    believe five previous projects where we have done  
19    this analysis, we only had available to us  
20    chemical mass balance and emissions inventory data  
21    that dated from 1994.

22            In the most recent analysis we were able  
23    to take advantage of refined chemical mass balance  
24    analyses that were done to support the new PM-10  
25    air quality plan.

1           And it is, the updates in the emissions  
2   inventory and the update in the chemical mass  
3   balance modeling analyses that represent the bulk  
4   of the difference. Methodology is exactly the  
5   same for the two sets of analyses.

6           MR. SARVEY: Do the costs of SO2 offsets  
7   influence your decision to use SO2 rather than PM-  
8   10 ERC's?

9           MR. RUBENSTEIN: I suspect that the  
10   relative cost influenced MID's decision, but that  
11   was their decision, not ours.

12          MR. SARVEY: In your testimony you state  
13   that, on page 20, "with the implementation of the  
14   above mitigation measures, and in combination with  
15   the proposed conditions of exemption contained in  
16   the final study, the project will comply with all  
17   applicable federal, state and local LORS."

18          What assurances can you give to the  
19   public, and to the Committee, that this project  
20   will meet its permit conditions?

21          MR. RUBENSTEIN: You missed a phrase.  
22   The proposed conditions of exemption as amended  
23   herein.

24          The assurance is the same assurance that  
25   any Applicant provides, which is that they're

1 going to be subject to stringent monitoring  
2 requirements by the local air district, and  
3 stringent reporting requirements. And that there  
4 is substantial penalties for non-compliance.

5 MR. SARVEY: And if the project does not  
6 meet it's conditions of exemption, will you still  
7 have the same testimony that this project will not  
8 harm the environment or the public in any way?

9 MR. RUBENSTEIN: If the project does not  
10 comply with its conditions of exemption then I  
11 can't make any statements regarding public health.

12 MR. SARVEY: Okay. Were you not the air  
13 quality expert in the Delta Energy Center  
14 proceedings?

15 MR. RUBENSTEIN: Yes I was.

16 MR. SARVEY: And are you aware that that  
17 project has 47 violations of its permit conditions  
18 in the last two years?

19 MR. RUBENSTEIN: I --

20 MS. WARREN: At this point I may want to  
21 question the relevance of a line of questioning  
22 about a project that hasn't been shown to bear  
23 relationship, other than it had the same expert.

24 HEARING OFFICER VALKOSKY: I think that  
25 Mr. Sarvey -- correct me if I'm wrong -- is trying

1 to establish the necessity for enforcing the  
2 conditions to protect public health, is that  
3 correct?

4 MR. SARVEY: Yes it is.

5 HEARING OFFICER VALKOSKY: Okay. Would  
6 you agree that's a correct statement, Mr.  
7 Rubenstein, that in order to protect public health  
8 adequately and preserve air quality, a certified  
9 or exempted plant must in fact meet the conditions  
10 imposed upon it by the Energy Commission and the  
11 district?

12 MR. RUBENSTEIN: Yes. I agree with that  
13 statement.

14 HEARING OFFICER VALKOSKY: Okay.

15 MR. SARVEY: Air emissions from a  
16 combined cycle project per megawatt are a lot less  
17 than they are per megawatt with a single cycle  
18 facility. Considering that this project will be  
19 licensed for 8760 hours, from an air quality  
20 perspective, would you recommend to the Applicant  
21 to use a combined cycle project configuration?

22 MR. RUBENSTEIN: The annual emissions  
23 from a combined cycle configuration from this  
24 plant would likely be no different than higher  
25 that the annual emissions from a simple cycle

1 plant.

2           And I make that statement for two  
3 reasons. First, the mass emission rates in pounds  
4 per hour are not likely to be any different for a  
5 combined cycle plant as opposed to a simple cycle  
6 plant. And second, a combined cycle plant would in  
7 fact likely operate more hours per year than a  
8 simple cycle plant.

9           So the permitted emission levels would,  
10 in my opinion be essentially the same, and the  
11 actual emissions from a combined cycle plant would  
12 likely be greater because of increased frequency  
13 of operation.

14           MR. SARVEY: Do your construction  
15 conditions you propose include all the feasible  
16 conditions that are proposed in the San Joaquin  
17 Valley Pollution Control District PM-10 plan?

18           MR. RUBENSTEIN: I'm not certain that  
19 they do, because I did not do a detailed line by  
20 line comparison with the San Joaquin District's  
21 PM-10 plan.

22           MR. SARVEY: Would you agree that, in  
23 order for the district to meet its PM-10  
24 projections, it's important for all projects to  
25 comply with the newly promulgated regulations?

1 MR. RUBENSTEIN: That's a different  
2 question than the one you just asked me, right?

3 MR. SARVEY: Yes.

4 MR. RUBENSTEIN: Okay. Yes, I agree  
5 it's important for the project to comply with its  
6 promulgated, the air district's promulgated  
7 regulations to help the air district meet the PM-  
8 10 air quality standard.

9 MR. SARVEY: Thank you, Gary.

10 HEARING OFFICER VALKOSKY: Redirect, Ms.  
11 Warren?

12 MS. WARREN: None from us.

13 MR. WESTERFIELD: No redirect from us  
14 either.

15 HEARING OFFICER VALKOSKY: It's very  
16 late, gentlemen.

17 MR. GARCIA: Yes, Mr. Rubenstein, I have  
18 a couple of questions here. I know this isn't  
19 your exhibit, but they're quoting your data in the  
20 staff's FIS they're quoting your testimony that  
21 the projected NOX emissions for this project are  
22 88,990 pounds of NOX on an annual basis.

23 Does that number seem familiar or  
24 reasonably close?

25 MR. RUBENSTEIN: Yes.



1           MR. GARCIA: Okay. And what was the  
2 basis for that calculation. Were you assuming  
3 full load 8760 or some other capacity factor?

4           MR. RUBENSTEIN: You can find the answer  
5 to that question in supplement A, which is exhibit  
6 2, at page 8.1-26. And at that page we show the  
7 total NOX emissions from the plant at 45.3 tons  
8 per year, so a little over 90,000 pounds per year.

9           And immediately above that it indicates  
10 that, based on a worst-case assumption of full  
11 load operation for 8,395 hours per year plus 365  
12 hours per year of startups, which represents an  
13 even higher emission rate than base load  
14 operation. So it's basically 8760.

15          MR. GARCIA: Okay. So that's the worst  
16 case. And this is for simple cycle operation,  
17 correct?

18          MR. RUBENSTEIN: That's correct, for two  
19 turbines, simple cycle operation.

20          MR. GARCIA: Now in a hypothetical case,  
21 where you have the same output but we're changing  
22 the type of cycle to a combined cycle, and it has  
23 the characteristics we talked about earlier, in  
24 stead of having the 9,000 BTU per kilowatt hour  
25 heat rate it's got a 6,000 BTU per kilowatt hour

1 rate, would we expect the emissions to be higher  
2 or lower?

3 MR. RUBENSTEIN: It depends on how  
4 you're achieving that. If you were to take MID's  
5 proposal for this project, which is two LM6000  
6 turbines, and add a combined cycle component to  
7 those turbines --

8 MR. GARCIA: No, we're going to  
9 normalize it to the same amount of kilowatt hours.

10 MR. RUBENSTEIN: Okay. If you're doing  
11 that, and if you could hypothetically find  
12 turbines and design them to do that, and all of  
13 your other assumptions hold true, then at this  
14 number of megawatt hours there would be less fuel  
15 consumption and correspondingly lower emissions  
16 associated with producing the same amount of  
17 electricity -- I'm hesitating because I'm trying  
18 to make sure that that's true for all pollutants,  
19 and I believe they are.

20 MR. GARCIA: We're making this simple,  
21 we're just looking at NOX.

22 MR. RUBENSTEIN: Yes, with respect to  
23 NOX I believe that would be true.

24 MR. GARCIA: To paraphrase what I think  
25 you said, everything else being equal, the amount

1 of NOX in proportion to the amount of fuel that's  
2 consumed?

3 MR. RUBENSTEIN: That's correct.

4 MR. GARCIA: Okay. And I guess if we're  
5 just looking at, in terms of mitigating the  
6 emissions from this hypothetical plant, one  
7 argument would be that well, what's the  
8 difference, you know, we're mitigating it through  
9 ERC's.

10 But another argument would be that  
11 mitigation, current mitigation is better than  
12 mitigation that, or inert, which is mitigation  
13 that occurred a long time ago and maybe in a  
14 different location. Does that kind of describe  
15 it?

16 MR. RUBENSTEIN: Maybe I could restate  
17 what I think you're trying to say differently.  
18 Reducing emissions is always better than  
19 mitigating emissions. And I agree with that.

20 MR. GARCIA: So then it would, putting  
21 those two thoughts together then, would it not be  
22 better to have a -- ignoring all the other  
23 niceties of having the benefits of having load  
24 following and so on and so forth -- wouldn't it be  
25 better to have combined cycle rather than simple

1 cycle, at least from the point of view of  
2 minimizing air emissions?

3 MR. RUBENSTEIN: If there were no other  
4 factors involved, such as a need for quick  
5 response, quick startup times, or load following  
6 capabilities, if all of those issues were gone,  
7 then yes it would be preferable from an air  
8 emissions perspective to have a combined cycle  
9 plant as opposed to a simple cycle plant.

10 MR. GARCIA: All right. That's all the  
11 questions. Thank you very much.

12 HEARING OFFICER VALKOSKY: Any further  
13 questions for the witness? Exhibits, Ms. Warren?

14 MS. WARREN: Yes. We'd like to move the  
15 exhibits listed in attachment to the filed  
16 testimony.

17 HEARING OFFICER VALKOSKY: Is there  
18 objection?

19 MR. WESTERFIELD: No objection.

20 MR. SARVEY: No objection.

21 HEARING OFFICER VALKOSKY: Does your  
22 lack of objections extend to exhibits 35 and 36?

23 MR. WESTERFIELD: We have no objection.

24 HEARING OFFICER VALKOSKY: Okay, Mr.

25 Sarvey? Any objections to Applicant's exhibits,

1 and this includes exhibits 35 and 36, the  
2 environmental review guidelines and the guide for  
3 assessing and mitigating air quality effects?

4 MR. SARVEY: No objection.

5 HEARING OFFICER VALKOSKY: Okay, those  
6 exhibits are admitted. Mr. Westerfield?

7 MR. WESTERFIELD: Well, we'd like to  
8 call Mr. Will Walters to testify on air quality  
9 please, last but not least.

10 HEARING OFFICER VALKOSKY: Swear the  
11 witness please.

12 Whereupon,

13 WILLIAM WALTERS  
14 was called as a witness herein, and after first  
15 having been duly sworn, was examined and testified  
16 as follows:

17 MR. WESTERFIELD: Mr. Walters, thanks  
18 for your patience today. Would you please tell us  
19 what you're involvement is with reference to  
20 preparation of staff's air quality testimony?

21 MR. WALTERS: Yes. I prepared and --

22 HEARING OFFICER VALKOSKY: Excuse me.  
23 Would you state your name?

24 MR. WALTERS: Yes, my name is William  
25 Walters. I prepared and oversaw Lisa Blewett (sp)

1 preparing other sections of the air quality  
2 analysis for the MID MEGS project.

3 MR. WESTERFIELD: And is that testimony  
4 accurate to your knowledge?

5 MR. WALTERS: It is with one errata that  
6 I'd like to put forth now.

7 MR. WESTERFIELD: Please do.

8 MR. WALTERS: On page 3-54, in making  
9 some changes to AQC4 that we agreed to in our  
10 workshop, I omitted one of the changes that we'd  
11 agreed to, and I'd like to get that one word back  
12 in. And that is on the second to last line of the  
13 condition itself, where it should say "any visible  
14 dust plume". So add the word "dust" between  
15 visible and plume.

16 MR. WESTERFIELD: Okay. And with that,  
17 could you please briefly describe your  
18 qualifications for the Committee in the area of  
19 air quality?

20 MR. WALTERS: Yes. I have a BS in  
21 Chemical Engineering. I'm a Registered  
22 Professional Engineer in chemical engineering in  
23 the state of California. I've worked on  
24 approximately, or am working on approximately a  
25 dozen siting cases in air quality. And I have

1 about 17 years of experience in air quality  
2 research and analysis.

3 MR. WESTERFIELD: Okay, thank you. And  
4 could you please summarize briefly your testimony  
5 that you submitted as part of the final initial  
6 study?

7 MR. WALTERS: Yes. In our analysis we  
8 go through various steps to assess the project.  
9 One of the first steps is to identify the setting.  
10 The main component of that is identifying the  
11 ambient air quality that the project is in the  
12 area of, in this case in the San Joaquin Valley  
13 air basin.

14 The important components of that are the  
15 fact that the air basin is in non-attainment for  
16 federal and state standards for PM-10 and ozone,  
17 and is in fact a severe PM-10 non-attainment area,  
18 and a serious, or excuse me, a serious PM-10 non-  
19 attainment area and a severe ozone non-attainment  
20 area.

21 Other parts of analyzing the setting are  
22 based on a review of the maps and determination of  
23 local receptors wind patterns, etc., which in this  
24 case, being on the east side of the valley, you  
25 have a general up valley down valley flow,

1 predominately down valley most of the year. That  
2 predominance becomes slightly up valley in the  
3 winter.

4 Then we identify the likely emissions  
5 and impacts for the project. First I'll discuss  
6 construction. In this particular project we did a  
7 lot of review, a lot of data requests, and the  
8 Applicant and staff worked very hard to come up  
9 with an agreeable revised construction estimate  
10 and modeling procedure, which we used in this case  
11 and another.

12 And for those modeling procedures there  
13 are specific assumptions that are tied into those  
14 procedures, which essentially become part and  
15 parcel the conditions of certification, to make  
16 sure that the analysis that we have matches the  
17 level of mitigation that's actually employed at  
18 the site.

19 And in reviewing the construction there  
20 are a few important characteristics for this  
21 particular site that we were looking at. That  
22 being the residential receptors being very close  
23 to the site, the closest is about 700 feet. There  
24 are several others that are in and around 1,000  
25 feet. They are all in the predominate winter wind



1 direction to the north to northwest.

2           There's also a school that's not  
3 particularly far in the same general direction.  
4 Certain assumptions in the modeling that we  
5 reviewed are that the dust control efficiency  
6 assumed an 89 percent control efficiency on the  
7 worst day, and a 92 percent efficiency on an  
8 annual average -- which is a very high level of  
9 dust control -- and is one of the reasons that  
10 staff has the conditions that it does have, so  
11 that the analysis reflects, or the mitigation  
12 reflects the analysis and the findings of the  
13 analysis.

14           The other assumptions that I would like  
15 to point out are the fact that all of the offroad  
16 diesel equipment between 50 horsepower and up, all  
17 of them were assumed to meet tier one standards.  
18 While the Applicant indicated that they met tier  
19 one standards where they could find such engines,  
20 they made no provision for any percentage of those  
21 engines not actually being tier one in their  
22 analysis. They assumed 100 percent in the  
23 emission analysis.

24           Another factor that I would like to  
25 identify is the fact that with these revised

1 admission estimates, which were considerably lower  
2 than previous estimates for similar projects, such  
3 as WGS2, in terms of their basis for the emission  
4 factors, which have been updated and which is one  
5 of the reasons why they're lower. And the  
6 different equipment fleet assumptions that the  
7 Applicant has made.

8 Even with that, the maximum 24 hour  
9 impact at the maximum exposed residence was over  
10 20 microgram per cubic meter, with all of the  
11 assumptions, 90 percent controls, and its use of  
12 tier one equipment.

13 Another factor with the modeling  
14 analysis that we used in determining our  
15 conditions of certification were the fact that the  
16 modeling assumed a nine hour day for the  
17 construction schedule, and did not make any other  
18 assumptions in terms of more hours per day that  
19 may or would happen in a worst cast day.

20 In terms of the significance findings  
21 that we had, we made a determination that with all  
22 of these factors, and all of these factors and  
23 mitigation being complied with, that we made a  
24 finding that there would be no potential  
25 significant impact.

1           One thing I would like to identify for  
2   this project which is somewhat different than an  
3   AFC, as we talked about many hours ago -- this  
4   being an SPPE we're talking about a negative dec,  
5   or in essence a mitigated neg, and the standard of  
6   proof is a little bit higher for significant  
7   impact in order to qualify for mitigated neg dec.

8           So in my assessment I have to be very  
9   certain that there's no potential for significant  
10   impact. And that is another reason why the  
11   conditions are as they are.

12           And the conditions of exemption that we  
13   did find for construction are AQC 1 through AQC5.  
14   I believe at this point, in practicality, the only  
15   issues we have are two issues in AQC3, which I  
16   will go into a little more detail later.

17           I think there's another issue of  
18   terminology in one paragraph, and actually if we  
19   could probably sit down for five minutes we could  
20   get an agreement on it. Although at this point I  
21   have some reservations on how it was rewritten by  
22   the Applicant.

23           For operation we took a look at the  
24   project design, the proposed mitigation, the  
25   modeling results, redid some of the modeling to

1 identify if the modeling was done correctly -- we  
2 found no specific problems with the modeling. We  
3 identified the control technology and made  
4 determination that these technologies were assumed  
5 they would meetback.

6 Another issue I'd like to identify to  
7 the Committee is that we're a little bit ahead of  
8 the district right now. We don't have any  
9 official documentation from the district as can be  
10 the case in SPPE, and it's different than the AFC,  
11 where we do wait for the preliminary DOC and the  
12 FDOC.

13 So we are, to some extent, judging what  
14 we believe the district will do in terms of  
15 findings for BACT and offset requirements. In  
16 terms of offsets the Applicant has agreed to  
17 staff's condition that they will fully offset all  
18 non-attainment pollutants and their precursors, at  
19 a minimum one to one ratio, including the minimum  
20 offset ratio of 1.2 to one for the SO2 to PM-10.

21 Therefore, they had mitigated on the one  
22 to one for the 8760 schedule for all pollutants  
23 except for NOX, which has a slightly different  
24 basis for its determination of maximum.

25 At least a one to one, in fact I believe

1 it's exactly one to one for VOC and it will be  
2 exactly a one to one for SO2. And using the 1.2  
3 to one in a pollutant offset ratio it will also be  
4 a one to one for PM-10.

5 The district requirements actually  
6 require slightly more than a one to one based on  
7 their distance ratio for NOX, so they are  
8 exceeding our baseline or minimum CEQA mitigation  
9 requirements for NOX on the project.

10 In determination of the interpollutant  
11 offset ratio we had provided at least a couple of  
12 communications, phone calls with the district,  
13 with some issues and ideas on the interpollutant  
14 offset ratio. And we were satisfied with the  
15 district's final calculations and agree with the  
16 1.2 to one determination that they've made in this  
17 case.

18 And the condition of certification that  
19 has been agreed to by ourselves and the staff on  
20 the offsets, and additional offsets, or at least  
21 certificates that will have to be identified by  
22 the Applicant to cover our requirements that are  
23 in addition to the district, are in our condition  
24 AQC6, with a schedule for compliance in providing  
25 us the information for the additional ERC's. And

1 again, that condition has been agreed to between  
2 staff and Applicant.

3 MR. WESTERFIELD: So it sounds like,  
4 that's a bit of a rundown. Can we maybe now focus  
5 on perhaps any remaining disagreements or issues  
6 between us and what the Applicant has proposed?

7 MR. WALTERS: There's one serious issue,  
8 I guess, that we need to go over. Regardless of  
9 the alternative one, two, or three that the  
10 Applicant has proposed to change the conditions,  
11 it's tying in the fugitive dust mitigation  
12 requirements to the 20 percent opacity.

13 Each one of them would do that, whether  
14 it's tying directly to the district requirements  
15 or tying to our AQC4 the AQC sub-A condition.  
16 Once you put those two together you're basically  
17 saying that the mitigation only has been applied  
18 to the 20 percent opacity.

19 AQC4 is, does not have the same intent  
20 as AQC3. AQC4 is meant for extreme events, for  
21 nuisance conditions. Or at least that is my  
22 interpretation or reason for putting it in this  
23 analysis. Whereas AQC3 is our condition in order  
24 to ensure that there will be no potential for a  
25 significant impact due to the PM-10 fugitive dust

1 emissions, and equipment tailpipe emissions of PM-  
2 10.

3 In getting into the specifics of why 20  
4 percent opacity is a problem, or tying to the  
5 district rules is a problem, I guess I first would  
6 like to go through the district rules and some of  
7 the, I guess, we could call them exemptions.

8 Some of them are applicability  
9 thresholds, some of them are alternative measures  
10 towards compliance. All of them would weaken the  
11 requirements that we have on our conditions.

12 The first one of those is the -- and  
13 perhaps the most important one -- there's, in  
14 condition 8011 there is the allowance for the  
15 fugitive PM-10 management plan as an alternative  
16 to compliance with rule 8061 and 8071. They're at  
17 least the substandard requirements.

18 This fugitive PM-10 management plan only  
19 requires a 50 percent control efficiency for the  
20 dust mitigation, and I'd like to point out again  
21 that staff's analysis has assumed on a worst case  
22 day an 89 percent, and on the annual average a 92  
23 percent control efficiency, which would create a  
24 rather large disconnect between the enforced level  
25 of mitigation and the mitigation that we're

1 assuming in order to come up with our finding of  
2 no significant impact.

3 The next that I'd like to point out is  
4 for rule 8051. The rule is only applicable if you  
5 actually have three acres or more of disturbed  
6 surface area, so any smaller areas of disturbed  
7 surface area would not be subject to the rule, or  
8 even 20 percent opacity restriction requirements,  
9 so no mitigation would be required at all.

10 So there could be ways to get around the  
11 requirements of doing anything on the disturbed  
12 areas and maintain compliance with Regulation 8  
13 rules, just by keeping the disturbed area down to  
14 a fairly small size at an y given time.

15 Also the rule provides a definition of  
16 what is called a stabilized area. And once you've  
17 turned something into a stabilized area it no  
18 longer is what is considered disturbed, and that  
19 would be another way to reduce the acreage at any  
20 given time so that the requirements of that rule  
21 would not be in effect.

22 Two other applicability thresholds which  
23 are essentially the same, in rule 8061 and 8071,  
24 are that any road segment or any unpaved vehicle  
25 equipment traffic area that does not experience 75



1 trips in a day does not require any mitigation,  
2 nor does it fall within the 20 percent opacity  
3 restriction requirements.

4 There are a few other exemptions, or  
5 ways of getting around rule requirements. One  
6 would be the definition of bulk materials does not  
7 include any material that has less than a five  
8 percent silt loading content.

9 So if it were to be found that the silt  
10 loading in a particular area of the site was 4.9  
11 percent, again no requirements from the bulk  
12 materials rule would be applicable, and no  
13 mitigation would be required under district rules.

14 So those are some of the reasons why we  
15 don't feel that strict compliance with the  
16 district rules would be adequate to control the  
17 site, or to be able to enforce the requirement of  
18 mitigation on the site.

19 Another issue with the district  
20 Regulation 8 rules is that there is no tie-in with  
21 these rules to any specific location, any specific  
22 receptor, or any specific impact from a project.  
23 So, unlike other rules that are being developed  
24 that actually identify a microgram per cubic meter  
25 standard that would be identified as a

1     significance criteria, here it's more basically if  
2     you meet 20 percent opacity they assume that you  
3     won't have a significant impact.

4             Next I guess I would like to discuss 20  
5     percent opacity and what it really means. I think  
6     anybody who's done any source testing -- and  
7     there's various literature out there that can  
8     indicate what 20 percent opacity means in terms of  
9     initial concentrations.

10            It does depend on the material and the  
11     size and distribution of the material, but in  
12     general you could say an initial 20 percent  
13     opacity would be equivalent to somewhere around  
14     40,000 to 200,000 micrograms per cubic meter, and  
15     you can see that having very many of those types  
16     of plumes in a project site could mean extremely  
17     high impacts offsite.

18            And in fact the modeling analysis, the  
19     way it was done and approved, based on the 90  
20     percent control, the maximum equivalent  
21     concentration that could be described on the  
22     modeling, based on the lowest wind speed through  
23     the volume source that was modeled, would be  
24     approximately 8,000 micrograms per cubic meter,  
25     which factors lower than a 20 percent opacity

1 would be expected to be.

2           So basically, in summary, we had to live  
3 with the 20 percent opacity as an overall guiding  
4 control requirement. I could not make a finding  
5 that there would be no significant impact from the  
6 construction of the facility.

7           MR. WESTERFIELD: Mr. Walters, are there  
8 any other particulars of our recommended mediation  
9 in AQC3 you'd like to touch upon?

10          MR. WALTERS: The other contentious  
11 issue is the definitions in AQC3-O. Realizing  
12 that that was not put into a decision before was  
13 not staff's recommendation at that time, and is  
14 not staff's recommendation at this time to add  
15 that language, which we consider to be overly  
16 prescriptive.

17          And certainly we don't define every term  
18 that we have in all of our conditions, and we would  
19 assume a reasonableness of not available and any  
20 other specific term could be made when evaluating  
21 the plan and during the construction of the  
22 equipment. And the other term being not  
23 practical.

24          And the other issue in AQC-O is that the  
25 Applicant would like to change the horsepower

1 requirement from a 50 horsepower to a 100  
2 horsepower. Again, staff's problem with that is  
3 inconsistent with the analysis that was performed.

4 As I mentioned earlier the Applicant  
5 assumed tier one equipment for all equipment above  
6 50 horsepower in their analysis, and so staff  
7 would like to keep the mitigation consistent with  
8 the assumed mitigation that was used in the  
9 impact, in the emissions and impact analysis used  
10 by the Applicant.

11 To address, I guess -- I'm going to  
12 actually go back and address the other option  
13 provided by the Applicant, which is the use of the  
14 old WGS2 condition in the place of our AQC3 that  
15 we have now.

16 Basically, staff has undergone, over the  
17 last couple of years, a lot of review of this  
18 particular condition, and has updated it both to  
19 be more technically accurate in its description  
20 and to add what it considers all of the feasible  
21 emission controls that would be required in order  
22 to mitigate the PM-10 emissions from construction  
23 projects.

24 We do allow a certain amount of latitude  
25 in certain projects on a case-by-case basis for

1 these, and again it would depend on the site, the  
2 ambient air quality of the area, the receptors and  
3 the wind directions, and the other regulatory  
4 background of those particular projects.

5 But for this particular project staff  
6 agreed to several of the requested changes to AQC3  
7 by the Applicant. But again, does not agree to  
8 the changes that they are now proposing in AQC3A  
9 and AQC30.

10 MR. WESTERFIELD: Mr. Walters, would you  
11 like to address certain comments by Mr. Sarvey  
12 with reference to PM-10 precursor ammonia  
13 emissions?

14 MR. WALTERS: Mr. Sarvey's comments  
15 regarding ammonia took the basic form that he  
16 believes additional PM-10 precursor mitigation  
17 should be applied to deal with the ammonia's  
18 impact to secondary PM-10 formation.

19 I guess you could say that staff's  
20 position on that would be -- actually there's  
21 several items that could be identified. Number  
22 one, the ammonia in and of itself is creating a  
23 greater good of eliminating several hundred tons -  
24 - or at least 200 tons -- of NOX, while there is  
25 the potential for the creation of 58 tons of

1 ammonia.

2 As has been testified to throughout the  
3 day, the likelihood of the actual operating  
4 schedule being 8760 is very low, and not likely to  
5 happen, due to economic and other reasons. Even  
6 if it were, as previously testified, they fully  
7 mitigated their operating emissions for all their  
8 other criteria pollutants and precursors to non-  
9 attainment pollutants to a one to one.

10 So in general we would consider that the  
11 project is not only fully mitigated but probably  
12 over-mitigated, based on the fact of its likely  
13 schedule of operation. But, that being said,  
14 since we are going to permit, or the district is  
15 going to permit to 8760, we certainly wouldn't  
16 lower our expectation of ERC's, but we could say  
17 that those ERC's, to some extent, would be  
18 expected to help with the ammonia issue.

19 Also, to mirror what I believe the  
20 Applicant has said for ammonia, there -- the  
21 available information isn't particularly good in  
22 creating an exact number on what a new project,  
23 and its ammonia emissions, would do to secondary  
24 PM-10. Also, there is no like emission  
25 reduction -- ERC's -- available. We cannot get an

1 ammonia for an ammonia ERC.

2 And without a decent level of science  
3 there's no way of knowing what an appropriate PM-  
4 10 to ammonia offset ratio would be. But  
5 irregardless, since we are attacking the issue  
6 really from the other side of the salt formation,  
7 from the ammonium sulfate and sulfite, and  
8 ammonium nitrate, by requiring emission offsets  
9 for those pollutants we feel that we have taken  
10 care of the secondary PM-10 potential impacts due  
11 to requiring at least a one to one for those  
12 particular pollutants.

13 MR. WESTERFIELD: Thank you very much.  
14 That's all the questions we have.

15 HEARING OFFICER VALKOSKY: Mr. Walters,  
16 if we could go back here to condition three, as  
17 contained in alternative three on page 36 of  
18 Applicant's testimony -- and basically this is a  
19 portion of Mr. Rubenstein's testimony where he  
20 indicates the changes they are proposing to  
21 subsection O -- are you there? Fine.

22 You indicated I believe agreement to  
23 subsection 3 with the change to 100 horsepower  
24 from 50 horsepower?

25 MR. WALTERS: Correct. In --

1           HEARING OFFICER VALKOSKY: Okay, just  
2 one second. Mr. Rubenstein, did I recollect  
3 correctly that your reason for the change is  
4 because you had not used the 50 horsepower figure  
5 in your assumptions?

6           MR. RUBENSTEIN: That's correct, the 50  
7 horsepower figure is used twice in that paragraph,  
8 Mr. Valkosky. We did not object to the first  
9 change, because I agree with Mr. Walters that that  
10 is consistent with our assumption. I disagree in  
11 the second usage, which relates to soot filters,  
12 because I believe that's not consistent with our  
13 assumptions.

14          HEARING OFFICER VALKOSKY: Mr. Walters,  
15 you indicated that you believe that was correct  
16 with his assumptions?

17          MR. WALTERS: I believe that, if tier  
18 one equipment cannot be found, that since the  
19 particulate is the main constituent we're trying  
20 to control for construction, if we cannot find  
21 tier one equipment that it's appropriate to add  
22 the potential for additional mitigation, if that  
23 mitigation is both available and practical.

24          HEARING OFFICER VALKOSKY: Okay, but  
25 that's a second issue. The first issue is the



1 change from 50 to 100, which you said you believe  
2 was consistent with the assumptions.

3 Mr. Rubenstein said he believed it was not  
4 consistent with the assumptions. Which is it?

5 Is 50 or 100 horsepower consistent with  
6 the assumptions in the second instance in that  
7 paragraph?

8 MR. WALTERS: It is consistent that, if  
9 you cannot have a tier one piece of equipment, in  
10 order to meet the emission numbers that are  
11 proposed by the Applicant, that you would need  
12 additional controls.

13 HEARING OFFICER VALKOSKY: Okay. Going  
14 to the condition suggested by the Applicant  
15 concerning availability and practicality, I  
16 understand staff's position is that it is not  
17 recommending the inclusion of this language. Does  
18 staff concede, however, that this language was  
19 specifically included by the Commission in the  
20 recent East Altamont case?

21 MR. WALTERS: To tell you the truth, I  
22 don't know if I have or haven't seen it in the  
23 case. I have been told it was included.

24 HEARING OFFICER VALKOSKY: Okay, in  
25 other words you objected to it then and you would

1 continue to object to it now.

2 MR. WALTERS: I believe staff objected  
3 to it, and continued to object to it in this case  
4 and in others.

5 HEARING OFFICER VALKOSKY: Okay. Next,  
6 going to the final paragraph, I asked Mr.  
7 Rubenstein -- and again, except for editorial  
8 clarity -- if in fact the part that Applicant  
9 suggests to strike out is substantively the same  
10 as the material it would add.

11 I believe Mr. Rubenstein's response was  
12 essentially yes, substantively there is no  
13 changes, merely an editorial preference. Do you  
14 have a similar or different view?

15 MR. WALTERS: It is very close to just  
16 being an editorial change. My problem with the  
17 way its written right now, and its broad  
18 conclusion of district requirements without  
19 pinning those requirements down a little bit, is  
20 the fact that some of the district requirements  
21 are the allowance of exemptions that we're  
22 specifically trying not to allow in this  
23 particular case.

24 Like not having to do controls if you  
25 have less than 75 trips on a --

1 HEARING OFFICER VALKOSKY: Okay, well do  
2 you have a proposal on how to narrow Applicant's  
3 proposed language?

4 MR. WALTERS: Uh --

5 HEARING OFFICER VALKOSKY: If you don't  
6 have it right now, maybe it's something you'd want  
7 the attorney to include in his post-hearing  
8 submission. Or if you have it now, that's fine.

9 MR. RUBENSTEIN: Mr. Valkosky?

10 HEARING OFFICER VALKOSKY: Yes, Mr.  
11 Rubenstein.

12 MR. RUBENSTEIN: If I could just  
13 suggest, I really don't think we need to take the  
14 Committee's time with this. I believe that  
15 Applicant can work with staff and we can provide a  
16 joint recommendation to you in the brief, if  
17 that's acceptable to staff?

18 HEARING OFFICER VALKOSKY: That's  
19 perfectly acceptable. Thank you.

20 COMMISSIONER BOYD: Mr. Valkosky, an  
21 observation here. While the parties are willing  
22 to work things out, I find staff's presentation to  
23 be a fairly significant condemnation of the San  
24 Joaquin Valley District rule Reg 8, basically  
25 saying it's not protective of the public's health.

1           And I'm wondering what the district's  
2 going to say about that later if they're going to  
3 testify. In any event, it's just kind of a  
4 comment here, an observation.

5           HEARING OFFICER VALKOSKY: We have a  
6 representative of the district?

7           VOICE: Yes. I didn't think it was my  
8 turn.

9           HEARING OFFICER VALKOSKY: Not yet. But  
10 you're willing to talk, correct?

11          VOICE: Yes.

12          MR. SARVEY: Mr. Valkosky, can I insert  
13 something here?

14          HEARING OFFICER VALKOSKY: Mr. Sarvey,  
15 yes.

16          MR. SARVEY: I think the district's  
17 fully aware that their Regulation 8 needs a little  
18 work, and that's contained in the draft PM-10  
19 plan. And I've got copies here that I think would  
20 help for guidance with the Committee, and also the  
21 parties here.

22               And it would be nice to docket it as an  
23 exhibit, because it shows that the district does  
24 recognize shortcomings in the plan and is  
25 addressing them.

1 HEARING OFFICER VALKOSKY: Okay. When  
2 we get to the district's presentation it would be  
3 great if you would hand those out.

4 MR. SARVEY: Thank you.

5 HEARING OFFICER VALKOSKY: Okay, Mr.  
6 Walters. I understood from Mr. Rubenstein's  
7 testimony that the interpollutant offset ratio of  
8 SOX, or -- excuse me, SO2 for PM-10, would be 1.2  
9 to one. Now does that comport with your  
10 understanding?

11 MR. WALTERS: That comports with my  
12 understanding, through my discussions with the  
13 district, yes.

14 HEARING OFFICER VALKOSKY: Okay. So  
15 that -- and again I'm trying to put into  
16 perspective some of the statements in your  
17 testimony, specifically page 3-43, fifth line  
18 down, where it says "staff at this time cannot  
19 determine if the Applicant's proposed SO2 for PM-  
20 10 interpollutant offset ratio is justified, and  
21 therefore cannot determine if this offset proposal  
22 is adequate to satisfy the CEQA mitigation  
23 requirements." Is that still a true statement?

24 MR. WALTERS: No, and to tell you the  
25 truth I thought that was struck in my last go-

1 around.

2 HEARING OFFICER VALKOSKY: Okay, I take  
3 it you'd like to strike it now?

4 MR. WALTERS: Let me make sure, and I  
5 can tell you exactly what should be struck. Yes,  
6 it would just be that full sentence.

7 HEARING OFFICER VALKOSKY: Okay. Next  
8 I'd like for you to go to page 3-51, first  
9 paragraph under conclusions. The second sentence  
10 starts, "therefore the Applicant does not have  
11 enough SO2 ERC's to fully offset the project's PM-  
12 10 and SO2 emissions at a minimum one to one  
13 ratio. The Applicant needs to obtain additional  
14 PM-10 and/or SO2 ERC's" etc. Is that still a  
15 correct statement?

16 MR. WALTERS: That is a correct  
17 statement. The difference between -- I'd like to  
18 clarify the statement, or the answer to the  
19 question I think that you had for Mr. Rubenstein  
20 and this statement. Mr. Rubenstein's answer,  
21 basically, was that they had or were showing  
22 enough to meet district requirements for their SO2  
23 and PM-10.

24 But our CEQA requirements are requiring  
25 a little bit more in the way of PM-10/SO2 credits

1 to fully offset at a one to one ratio both of  
2 those pollutants.

3 HEARING OFFICER VALKOSKY: I don't know  
4 what you mean by a little bit more, and again  
5 please correct me if I'm wrong. I was under the  
6 impression that SO2 for PM-10, on an  
7 interpollutant basis, was being offset at a ratio  
8 of 1.2 to one. Is that an incorrect  
9 understanding?

10 MR. WALTERS: No, that's a correct  
11 understanding. Let me try to get to the root of  
12 the issue. The difference between the district's  
13 offset requirements and our CEQA standard that we  
14 apply to projects. Our CEQA standard is that we  
15 apply a one to one ratio, starting from the first  
16 pound of emissions on, for all non-attainment  
17 pollutants and their precursors to be mitigated.

18 And its traditionally done in the form  
19 of ERC's. The district, on the other hand, has an  
20 offset threshold for PM-10 and SO2 and for this  
21 project the district does not require any SO2  
22 offsets and will require fewer PM-10 offsets than  
23 what would be the equivalent to our one on one.

24 Because the first 29,200 pounds of the  
25 project do not require offsets under the district

1 regulations.

2 HEARING OFFICER VALKOSKY: Mr.  
3 Rubenstein, do you agree with that?

4 MR. RUBENSTEIN: As far as his statement  
5 went. Just to clarify things, when I answered  
6 your question earlier, Mr. Valkosky, I intended to  
7 indicate that we had sufficient SO2 offsets to  
8 satisfy both the district and the Commission's  
9 staff requirements, not just the district's  
10 requirements.

11 But we have not formally identified  
12 those holdings to the staff, because we haven't  
13 seen the district's final determination yet.

14 HEARING OFFICER VALKOSKY: Okay, and the  
15 time you identify those holdings to the staff will  
16 be as provided for in condition AQC6?

17 MR. RUBENSTEIN: That is correct.

18 HEARING OFFICER VALKOSKY: Thank you for  
19 that clarification. Mr. Walters, is it your  
20 intent that the proposed conditions of exemption  
21 be included in the district's authority to  
22 construct, or how exactly will these be enforced?

23 MR. WALTERS: It's my understanding that  
24 these conditions of exemption, certainly AQC 1  
25 through AQC6, would be enforced strictly through



1 the CEC and the CPM, since all of this would be  
2 done during the construction period before -- they  
3 should all be taken care of before first fire up  
4 of a turbine.

5 HEARING OFFICER VALKOSKY: Okay. So the  
6 district would not, per se, enter into the  
7 enforcement of any of these?

8 MR. WALTERS: No. Although the district  
9 certainly would have the right to enforce its  
10 Regulation 8 rules.

11 HEARING OFFICER VALKOSKY: Of course.  
12 You mentioned that the closest resident, I believe  
13 you said 700 feet from the project?

14 MR. WALTERS: That's my understanding.  
15 The closest resident to -- close to direct north,  
16 a little north/northwest.

17 HEARING OFFICER VALKOSKY: Okay, and I  
18 take it that's significant because that's a  
19 sensitive receptor that should be affected by the  
20 pollution, by the emissions rather?

21 MR. WALTERS: Yes. It's a sensitive  
22 receptor that is obviously very close to the  
23 construction site.

24 HEARING OFFICER VALKOSKY: Okay. I'd  
25 just like to point out, I believe in noise it was

1 determined that the receptor was about 1,000 feet  
2 from the project. I don't know if that makes a  
3 difference in your analysis?

4 MR. WALTERS: Well, I think what I heard  
5 was that Mr. Sarvey was questioning whether or not  
6 in fact it was 700, and I'm not sure that the  
7 answer --

8 MS. KAEFER: The difference is because  
9 the noise issue was from the center of the site,  
10 and now we're talking best, which is at the line.  
11 The center of the site is considerably farther in  
12 from the property line to the nearest receptor.

13 HEARING OFFICER VALKOSKY: Did you get  
14 any of that at all?

15 MR. WALTERS: Mr. Valkosky, would you  
16 like me to paraphrase?

17 HEARING OFFICER VALKOSKY: Yes, please  
18 do.

19 MR. WALTERS: Okay, I'm paraphrasing,  
20 from Pam Kaefer. Her understanding is that the  
21 700 feet would be from the site boundary where the  
22 construction activities will go up to, as opposed  
23 to the center of the site, or I guess the noise  
24 center of the site, which might be more like a  
25 thousand feet to that same residence.

1           HEARING OFFICER VALKOSKY: Okay, then I  
2   assume that the statement on page 348 that "the  
3   closest substantive receptor is located over one-  
4   half mile from the proposed site" needs amending.

5           MR. RUBENSTEIN: Mr. Valkosky?

6           HEARING OFFICER VALKOSKY: Yes.

7           MR. RUBENSTEIN: I know you don't want  
8   to debate this late at night, but I'm concerned  
9   that the record's getting a little confused. The  
10   term "sensitive receptor" is a term of art. The  
11   nearest residence is not a sensitive receptor.  
12   The term is used to refer to day care centers,  
13   hospitals, things like that.

14          HEARING OFFICER VALKOSKY: Okay, so a  
15   sensitive receptor -- thank you for that  
16   clarification -- is not --

17          MR. RUBENSTEIN: Right. In the context  
18   being used there, if it was either a school or  
19   community center, it was the closest.

20          HEARING OFFICER VALKOSKY: Okay, thank  
21   you for that clarification. Finally, you  
22   indicated that these conditions could possibly  
23   change from the time the final initial study was  
24   issued.

25          That statement I believe is on page 351

1 of your testimony, "as conditions presentable may  
2 be revised prior to the evidentiary hearing to  
3 address any comments received on this final  
4 initial study." Has this happened?

5 MR. WALTERS: It has happened in the  
6 essence that the Applicant identified a correction  
7 to AQC4 that I should have provided in the first  
8 place.

9 HEARING OFFICER VALKOSKY: Okay, but  
10 nothing in response to members of the public or  
11 anything else?

12 MR. WALTERS: No, I don't believe the  
13 conditions were changed due to any comments from  
14 the public.

15 HEARING OFFICER VALKOSKY: Okay, thank  
16 you. Ms. Warren?

17 MS. WARREN: Yes, I just have a few  
18 questions. You stated in your testimony, as I  
19 recall, that 20 percent of pat due for dust is  
20 equivalent to approximately 40,000 micrograms or  
21 more.

22 Can you identify for us, also in your  
23 testimony, where the support for that statement  
24 is?

25 MR. WALTERS: There were several

1     referents that I used, I only actually brought one  
2     with me. But it's from a permit from north coast,  
3     and it dealt with I believe it's wood particles  
4     that identified 20 percent opacity. Basically a  
5     chart of opacity versus grain loading, and  
6     identifies to be .09.

7             Another reference that I found was in an  
8     identification of opacity found for a boiler which  
9     has a different kind of, type of particle, that  
10    would generally provide higher opacity at lower  
11    weight, and that was equivalent to .02.

12            MS. WARREN: Again, I think it would be  
13    very helpful to us if you could just point out to  
14    us where in your testimony those references are  
15    made, so we can look at them more closely?

16            MR. WALTERS: I don't think it was  
17    specifically culled out in my testimony.

18            HEARING OFFICER VALKOSKY: Not in your  
19    written testimony?

20            MR. WALTERS: Not in my written  
21    testimony.

22            MS. WARREN: How does the 20 microgram  
23    impact you referenced for construction impacts  
24    compare with other projects that you've analyzed?

25            MR. WALTERS: That's a hard comparison

1 to make, for several reasons. Number one, a lot  
2 of the other projects had a lot more of what I  
3 considered conservatism in the analysis. A lot of  
4 times the modeling was done in a much more  
5 conservative way than it was done in this case.

6 The emission and emission profiles were  
7 much higher for equivalent construction projects.  
8 So the numbers may have been a little larger in  
9 some cases to the nearest receptor, in some cases  
10 they were lower because the nearest receptor  
11 wasn't as close to this project.

12 I certainly can't give you any specific  
13 numbers because I don't have any of those analyses  
14 in front of me.

15 MS. WARREN: What is the size of the  
16 disturbed area you analyzed for this project?

17 MR. WALTERS: The size of the disturbed  
18 area, as identified by the Applicant, was I  
19 believe about 12.8 acres, or 12.25, somewhere in  
20 that range.

21 MS. WARREN: Does a stabilized area, as  
22 it's defined in the district rules, result in  
23 significant dust levels?

24 MR. WALTERS: A stabilized area has the  
25 same essential 20 percent opacity limitation in

1 its inherent definition. I believe the district  
2 assumes a stabilized area will be considerably  
3 lower in general emission parameters than a non-  
4 stabilized area.

5 But under extremely high wind events,  
6 etc., you could have relatively high numbers as  
7 it's defined by the district, up to 20 percent  
8 opacity, because how stabilized is defined by the  
9 district rules.

10 MS. WARREN: Does your analysis for this  
11 project assume silt loading of 75 percent --  
12 greater than five percent, I'm sorry?

13 MR. WALTERS: Yes, the silt loading  
14 which was agreed to was, I believe, somewhere  
15 around 8.5 percent. And that's an assumption  
16 based on the soil type that's in the project area.

17 But that doesn't mean that silt loading  
18 in a particular area or after, you know, going  
19 down a little deeper in the scraping site they  
20 wouldn't find a lower silt loading content.

21 MS. WARREN: And if the silt loading  
22 were lower, the emissions would be lower, is that  
23 correct?

24 MR. WALTERS: Actually, without control,  
25 these emissions could be considerably higher. As

1 the equation goes, essentially if we assume no  
2 watering at all versus the 15 percent watering  
3 that's assumed in some of the equations, versus a  
4 silt loading of 8.5 and a silt loading of, let's  
5 say, you know, high 4's, the emissions would  
6 actually increase by 3.5 times.

7 I actually did the calculation a little  
8 earlier today in preparation for such a question.

9 MS. WARREN: Let me just ask one last  
10 question. Did your analysis of the project assume  
11 more than 75 trips per day?

12 MR. WALTERS: For the worst case day it  
13 assumed more than 75 trips per day. But that  
14 wasn't necessarily the case for the entire  
15 construction area.

16 MS. WARREN: I believe that's all I  
17 have.

18 HEARING OFFICER VALKOSKY: Mr. Sarvey?

19 MR. SARVEY: Mr. Walters, looking at the  
20 construction isopleth that you've just been handed  
21 and developed by the Applicant, and taking into  
22 consideration the proximity of residents to the  
23 project, is it your professional opinion that the  
24 most stringent construction mitigation measures be  
25 employed to protect the public health?



1           MR. WALTERS: I believe my testimony  
2 speaks to that aggressively, but yes I believe  
3 that all feasible construcion measures should  
4 be --

5           MR. SARVEY: Okay, and in your --

6           MS. WARREN: Excuse me, there was a  
7 document that was passed out that we didn't --  
8 and could you identify it from our exhibit.

9           HEARING OFFICER VALKOSKY: Okay, and the  
10 reference for that document is --

11          MR. SARVEY: It was in the -- I knew  
12 you'd know it, Gary.

13          HEARING OFFICER VALKOSKY: Do we have a  
14 copy of that document for the Committee, by any  
15 chance?

16          MR. SARVEY: Yes, there's several copies  
17 there -- thank you.

18          MR. RUBENSTEIN: For the record, Mr.  
19 Valkosky, what he handed out is a single page out  
20 of exhibit 13. And it's a page that's marked page  
21 number five, appendix 8.1, F as in Frank, within  
22 that exhibit. And it's a chart entitled "MID  
23 Ripon construction 24 hour PM-10, big volume."

24          HEARING OFFICER VALKOSKY: Thank you.

25          MR. SARVEY: Mr. Walters, in your

1 opinion does the poor air quality in the San  
2 Joaquin Valley require that all impacts from this  
3 facility be mitigated to the fullest extent  
4 possible?

5 MR. WALTERS: I believe that the  
6 emissions be non-criteria pollutants and their  
7 precursors should be mitigated to that extent.

8 MR. SARVEY: Is it possible that the SRC  
9 controls for this project could malfunction?

10 MR. WALTERS: It's possible that pretty  
11 much anything could malfunction.

12 MR. SARVEY: Were you aware that the  
13 Tracy peaker plant, on July 18th, which is  
14 operated only 160 hours, has already had a  
15 malfunction of its SCR and exceeded its permit  
16 conditions by 100 percent?

17 MR. WALTERS: No, I was not aware of  
18 that.

19 MR. SARVEY: In order for the Applicant  
20 to use an SO2 to PM-10 interpollutant offset,  
21 doesn't the Applicant have to demonstrate that he  
22 cannot obtain PM-10 credits in the region?

23 MR. WALTERS: To tell you the truth, I  
24 don't know if the district rules require that.  
25 And I think that question is probably more

1 appropriate to Mr. Swaney.

2 MR. SARVEY: Okay. Thanks. Earlier, in  
3 the initial study on page 3.4, your testimony  
4 states that section 4.143 requires the Applicant  
5 of a proposed new major source demonstrate to the  
6 satisfaction of the district that all major  
7 stationary sources subject to emission limitations  
8 that are owned or operated by the Applicant or any  
9 other -- excuse me, strike that. I'm sorry.

10 In your testimony earlier, you said that  
11 the Applicant would be allowed to use any emission  
12 reduction credits that resulted from the shutdown  
13 of a major stationary source, is that correct, in  
14 the district regulations?

15 MR. WALTERS: The district regulations  
16 identify that, but I believe that's for new major  
17 stationary sources.

18 MR. SARVEY: Okay, so it doesn't apply  
19 here?

20 MR. WALTERS: No.

21 MR. SARVEY: Okay. On page 50 of your  
22 testimony -- and that would be in the final study,  
23 3-50, you reject SCONOX as not technically  
24 feasible for this project, and you accept the San  
25 Joaquin Valley Unified Air Pollution control

1 District BACT determination for this project.

2 If SCONOX were technically feasible,  
3 wouldn't it accomplish a lower NOX emission limit  
4 than 2.5 ppm and completely eliminate any ammonia  
5 slip which has the unknown potential for formation  
6 of secondary PM-10?

7 MR. WALTERS: You know, to tell you the  
8 truth, I'm not sure if it could go less than 2.5 in  
9 this particular setting. It might be able to go  
10 less than 2.5. To answer your second question,  
11 ammonia is not used in SCONOX, so --

12 MR. SARVEY: Okay. Considering the poor  
13 quality in the San Joaquin Valley, wouldn't SCONOX  
14 be environmentally preferable if it were  
15 technically feasible?

16 MR. WALTERS: Well, you know, I guess  
17 the question is if it's technically feasible, and  
18 obviously, you know, the answer is that nobody has  
19 found it to be technically feasible for this type  
20 of turbine. There are other technologies out  
21 there too that show promise, but haven't been  
22 found to be technically feasible.

23 So I guess the answer is any technology  
24 that would not have ammonia and would result in  
25 lower NOX would certainly be advantageous if they

1 weren't cost prohibitive.

2 MR. SARVEY: Are you aware that the San  
3 Joaquin Valley Air Pollution Control District does  
4 consider SCONOX technically feasible? And as  
5 proof I could offer this documentation from the  
6 wellhead project that used the exact same  
7 turbines.

8 MR. WALTERS: I'm not aware of that  
9 document. I haven't seen it before.

10 MS. WARREN: I didn't --

11 HEARING OFFICER VALKOSKY: Are you --  
12 Ms. Warren?

13 MS. WARREN: I'm sorry, I didn't want to  
14 interrupt. I was probably going to do the same  
15 thing as you do, is ask for an identification for  
16 the document and also --

17 HEARING OFFICER VALKOSKY: Precisely  
18 what I was going to do.

19 MS. WARREN: -- and also a copy was  
20 being passed out. The other comment I'd like to  
21 make is if we're going to have reference to the  
22 document we'd like to have access to the entire  
23 document, as opposed to excerpts. It's very hard  
24 to interpret without the entire document.

25 HEARING OFFICER VALKOSKY: Understood.

1 Do you have the entire document, Mr. Sarvey?

2 MR. SARVEY: Yes, I do have the entire  
3 document. It's "Notice of Preliminary Decision,  
4 authority to construct, project number N1010453,"  
5 the wellhead power project.

6 HEARING OFFICER VALKOSKY: Could you  
7 provide a copy to the other parties?

8 MR. SARVEY: I could provide one copy,  
9 Mr. Valkosky, I apologize. Perhaps we could get  
10 copies?

11 HEARING OFFICER VALKOSKY: How many do  
12 we need? Seven would be a good number.

13 MR. SARVEY: That's all the questions I  
14 have, thank you. I'd like to submit that as an  
15 exhibit as well.

16 HEARING OFFICER VALKOSKY: Well it's,  
17 we'll give you a chance later. Let's let the  
18 parties look at it first. Any redirect, Mr.  
19 Westerfield?

20 MR. WESTERFIELD: No redirect.

21 COMMISSIONER PERNELL: I have a couple  
22 of questions.

23 HEARING OFFICER VALKOSKY: Yes, go  
24 ahead.

25 COMMISSIONER PERNELL: Mr. Walters, I

1     guess one of the things this Committee has been  
2     concerned about is compliance and enforcement. Do  
3     the Commission have compliance on all of the air  
4     mitigation, or who has compliance in your opinion?

5             MR. WALTERS: Well, compliance, at least  
6     for the fugitive dust requirements, is a somewhat  
7     twofold. It's the compliance will be through the  
8     Commission and the CPM, but the arm out on the  
9     site will actually be the AQCM that's identified  
10    in the first conditions the onsite person who will  
11    be making sure that the fugitive dust compliance  
12    is being done on a daily basis.

13            So compliance really, for this  
14    particular item, will have not only an onsite  
15    presence throughout construction, but will have  
16    the CPM who will then receive reports to ensure  
17    compliance will occur during construction.

18            The other condition, that is not  
19    strictly construction, which is the ERC's, the  
20    requirements for that gain will be through the  
21    CEC, and all of the compliance requirements have  
22    to occur before operation.

23            COMMISSIONER PERNELL: Right. So who  
24    does the CPM report to?

25            MR. WALTERS: The Commission.

1 COMMISSIONER PERNELL: Okay, so help me  
2 understand here for a minute. You said that  
3 there's two different compliance--

4 MR. WALTERS: Well, what I'm saying is  
5 that, in this case, we require there to be an  
6 onsite compliance manager, who will act --

7 COMMISSIONER PERNELL: Well, wait a  
8 minute. Excuse me, let me -- the onsite  
9 compliance manager, is that a CEC staff person, or  
10 who is it?

11 MR. WALTERS: No, that's a person who  
12 will be designated by the project owner.

13 COMMISSIONER PERNELL: By the Applicant.

14 MR. WALTERS: Right. But that person  
15 will be responsible to get the information to the  
16 CPM and will be responsible for the day-to-day  
17 compliance.

18 COMMISSIONER PERNELL: All right. And  
19 that has to do with the construction dust, PM-10,  
20 that's on the site during construction?

21 MR. WALTERS: Construction dust and the  
22 various tailpipe requirements of meeting tier one  
23 and/or the soot filters if practical and are  
24 available.

25 COMMISSIONER PERNELL: Right, the soot



1 filters on the construction equipment.

2 MR. WALTERS: Right.

3 COMMISSIONER PERNELL: And then the  
4 offsets, who does the compliance on the offsets.  
5 They just buy them from the district?

6 MR. WALTERS: Well, the Applicant is  
7 required to identify -- at this point they've  
8 identified most of the ERC's that are required.  
9 The remaining ERC's or the amounts of ERC's that  
10 are required or identified in the condition.

11 The Applicant has a certain amount of  
12 time from the time of the decision and/or worst  
13 case a time before the initiation of construction  
14 to provide the CPM with the rest of, or the  
15 identification of the rest of the ERC's. So that  
16 will all occur before construction is initiated.

17 COMMISSIONER PERNELL: Right. And,  
18 actually I think this question has been answered  
19 but are the offsets local or regional? Maybe this  
20 is for the Applicant.

21 MR. RUBENSTEIN: Well the -- do you have  
22 another question, and I can get your answer in a  
23 minute?

24 COMMISSIONER PERNELL: I'm sorry, what  
25 did you say?

1 MR. RUBENSTEIN: Do you have another  
2 question, and I can get that answer in a minute.

3 COMMISSIONER PERNELL: Well, my final  
4 statement, I guess, is that it seems to me that  
5 there is some disagreement between staff and the  
6 Applicant on mitigation.

7 And I would just encourage that, before  
8 this project comes before prime time, which is the  
9 full Commission, that that stuff get worked out  
10 And if it can't it can't, you know, but I would  
11 hate to have it come before the full Commission  
12 with this much disagreement. That's more of a  
13 statement.

14 HEARING OFFICER VALKOSKY: while Mr.  
15 Rubenstein is researching his answer, Mr. Walters,  
16 if you could just go -- and again I want to direct  
17 you to alternative 3 of the conditions, pages 34  
18 to 37 of Mr. Rubenstein's testimony.

19 Just indicate briefly, whether in your  
20 opinion, were we to include the clarifications  
21 suggested by Applicant, that inclusion would in  
22 fact create an adverse impact? And we'll start  
23 with page 34 of the AQC3A. With the inclusion  
24 of --

25 MR. WALTERS: With the inclusion of

1     tying in the mitigation requirements to 20 percent  
2     opacity requirements of AQC4, yes, we would have a  
3     finding of potential significant impact.

4             HEARING OFFICER VALKOSKY:   Okay.   Thank  
5     you.   Okay, the next change is on page 36.   The  
6     first change is in 03, the 50 to 100 horsepower.  
7     Same question.   Would changing 50 to 100 somehow  
8     result in the creation of an adverse environmental  
9     impact?

10            MR. WALTERS:   That one would be harder  
11    to determine, I'd probably have to reanalyze.  
12    Assuming that all the equipment under 100  
13    horsepower were not tier one.   And I haven't done  
14    that analysis.

15            HEARING OFFICER VALKOSKY:   Okay.   So  
16    that may or may not.   How about the inclusion of  
17    the other language, which speaks to availability  
18    or practicality?

19            MR. WALTERS:   No, I don't think I could  
20    say that would change specifically the findings.

21            HEARING OFFICER VALKOSKY:   Okay, and how  
22    about the -- well, the final paragraph I'll leave  
23    alone, because I think we indicated we'll look for  
24    a stipulate version of that.   Did that buy you  
25    sufficient time, Mr. Rubenstein?

1 MR. RUBENSTEIN: Yes, Mr. Valkosky, it  
2 did.

3 HEARING OFFICER VALKOSKY: Okay.

4 MR. RUBENSTEIN: Commissioner Pernell,  
5 the answer to your question is that the offsets  
6 for this project are regional, they range in  
7 distance from Stockton to Hanford. So they're  
8 pretty much throughout the valley.

9 I don't believe, though, that there's  
10 any disagreement between Applicant and staff on  
11 that issue for this project.

12 COMMISSIONER PERNELL: I'm sorry, I  
13 didn't --

14 MR. RUBENSTEIN: I said I don't believe  
15 there's any disagreement between Applicant and  
16 staff on that issue for this project.

17 COMMISSIONER PERNELL: No, I understand,  
18 I just want to be sure that the, who has  
19 compliance jurisdiction, and exactly what -- well,  
20 maybe not exactly, but a range of where the  
21 offsets are coming from.

22 MR. RUBENSTEIN: Yes, the actual  
23 specific locations are identified in the final  
24 initial study, and they are located in tables that  
25 are present on pages --

1 COMMISSIONER PERNELL: Yes, I think we  
2 have it.

3 HEARING OFFICER VALKOSKY: Okay.  
4 Anything else for Mr. Walters? Seeing nothing,  
5 thank you. And I guess the remaining area is the  
6 document tendered by Mr. Sarvey. I'm sorry, did  
7 you have any redirect?

8 MR. WESTERFIELD: No, we don't have any  
9 redirect, but we would like to submit the  
10 testimony into evidence.

11 HEARING OFFICER VALKOSKY: Is there  
12 objection?

13 MR. WESTERFIELD: This would be relevant  
14 portions of exhibit 22.

15 HEARING OFFICER VALKOSKY: Is there  
16 objection?

17 MS. WARREN: No objection.

18 MR. SARVEY: No objection.

19 HEARING OFFICER VALKOSKY: The portion  
20 of exhibit 22 is admitted. Now, turning to the --  
21 did we get copies of the document tendered by Mr.  
22 Sarvey?

23 MS. WARREN: It's still copying, as we  
24 speak.

25 HEARING OFFICER VALKOSKY: Oh, okay.

1 Realizing the parties need at least a few minutes  
2 to look at it. Mr. Sarvey, since we may have to  
3 take a brief recess to look at this, at your  
4 prehearing conference statement you indicated the  
5 desire to submit a couple of lists, and we  
6 reserved those as exhibits, I believe, 23 and 24  
7 on the exhibit list.

8 MR. SARVEY: I'm not going to submit  
9 them. The staff has satisfied all my questions  
10 with their final study, and I'm satisfied those  
11 exhibits aren't necessary.

12 HEARING OFFICER VALKOSKY: Okay, so the  
13 materials designated as your exhibits 23 and 24  
14 are essentially withdrawn.

15 MR. SARVEY: Yes, thank you.

16 HEARING OFFICER VALKOSKY: Okay. We can  
17 take five minutes and give everybody a chance to  
18 examine the document. Will that be a sufficient  
19 time?

20 MR. RUBENSTEIN: We're done.

21 HEARING OFFICER VALKOSKY: Oh, okay.  
22 Staff, are you done?

23 MR. WESTERFIELD: We're not done.

24 HEARING OFFICER VALKOSKY: Okay, take  
25 the five minutes then.

1 (Off the record.)

2 HEARING OFFICER VALKOSKY: Okay, we're  
3 back on the record now. Mr. Sarvey has tendered a  
4 document from the San Joaquin Valley District  
5 dated July 20th, 2001. And it's regarding a  
6 notice of preliminary decision, authority to  
7 construct, on project number N01010453. Ms.  
8 Warren?

9 MS. WARREN: Yes. Applicant would  
10 object to this document. First and foremost is  
11 that it's just a notice of preliminary decision,  
12 not a final. So I don't think it would be  
13 appropriate to enter it as evidence.

14 Secondly, I do think, I don't know that  
15 appropriate foundation has been laid for the  
16 document either.

17 And I guess the third point that I'd  
18 like to make is that we've had trouble identifying  
19 exactly where, from the full document that was  
20 passed out, the excerpt can be located.

21 HEARING OFFICER VALKOSKY: Okay, Mr.  
22 Sarvey, where is the excerpt located? Is that  
23 correct, Mr. Sarvey, that it's appendix A?

24 MR. SARVEY: Let's see --

25 HEARING OFFICER VALKOSKY: The concern

1 from Ms. Warren is that you referenced an excerpt.  
2 We now have copies of the document and she's  
3 trying to locate the excerpt. Mr. Garcia has  
4 indicated it's appendix --

5 MR. SARVEY: First page of appendix A.

6 HEARING OFFICER VALKOSKY: Okay.

7 MS. WARREN: That resolves a third of my  
8 three issues.

9 HEARING OFFICER VALKOSKY: Okay, the  
10 other two issues still remain, I take it. Mr.  
11 Westerfield?

12 MR. WESTERFIELD: Staff doesn't have any  
13 reason to question that it is what it purports to  
14 be. I think it's generally relevant to the issue,  
15 and it's information that the Committee may wish  
16 to weigh, so we have no objection.

17 HEARING OFFICER VALKOSKY: Okay. I  
18 would like, I understand we're going to hear from  
19 the district on this. I'd like the district to  
20 update us on this document if at all possible. So  
21 provisionally I'll take it as exhibit 37. And Mr.  
22 Swaney, if he could also include that in his  
23 presentation I would appreciate it.

24 Anything else from either staff or  
25 Applicant or Mr. Sarvey at this point?



1 MR. SARVEY: No sir.

2 HEARING OFFICER VALKOSKY: Mr.  
3 Westerfield, do you have anything else on this  
4 point?

5 MR. WESTERFIELD: No.

6 HEARING OFFICER VALKOSKY: Ms. Warren,  
7 do you have anything further on air quality?

8 MS. WARREN: No.

9 HEARING OFFICER VALKOSKY: Mr. Sarvey?

10 MR. SARVEY: No.

11 HEARING OFFICER VALKOSKY: Okay. sir,  
12 if you could introduce yourself, and spell your  
13 name for the record please?

14 MR. SWANEY: Sure. I'm Jim Swaney,  
15 that's S-w-a-n-e-y. I'm the Permit Services  
16 Manager with the San Joaquin Valley Air Pollution  
17 Control District.

18 First, as you asked, let me give you an  
19 update on the document that Mr. Sarvey handed  
20 out --

21 HEARING OFFICER VALKOSKY: Are you going  
22 to offer testimony or comment?

23 MR. SWANEY: You probably should swear  
24 me in, just in case.

25 HEARING OFFICER VALKOSKY: All right,

1 fine.

2 Whereupon,

3 JAMES SWANEY

4 was called as a witness herein, and after first  
5 having been duly sworn, was examined and testified  
6 as follows:

7 MR. SWANEY: Okay, on the document that  
8 Mr. Sarvey just handed out, which was a  
9 preliminary decision for the proposed wellhead  
10 electric power plant located in Tracy. Off the  
11 top of my head I cannot remember if we issued a  
12 final decision on that or not.

13 I do know that the project never went  
14 forward. The Applicant decided not to build the  
15 plant. It was one of many plants that were  
16 proposed in 2001, as a result of the Governor  
17 asking people to come forward with power plants.  
18 And many of those did not go through with the  
19 proceedings.

20 HEARING OFFICER VALKOSKY: Could you  
21 indicate, either in your -- well, I'd prefer your  
22 own submittal within the next two weeks or so,  
23 whether or not this project got a final decision,  
24 a final determination?

25 MR. SWANEY: Sure.

1 HEARING OFFICER VALKOSKY: Thank you.  
2 Continue.

3 MR. SWANEY: To give the Commission an  
4 update on where we are at with our analysis on  
5 this project, we have a draft preliminary decision  
6 that should be going out, hopefully by Thursday,  
7 if not then early next week. We're in the final  
8 stages of our internal review.

9 There have been a couple of points made  
10 tonight that I wanted to address. One is the  
11 interpollutant offset ratio. Verbally, to both  
12 Mr. Walters and to Mr. Rubenstein, I have  
13 confirmed that we have settled on a 1.2 to one  
14 offset ratio for SOX for PM-10. The basis for  
15 that will be in our preliminary decision.

16 Beyond that, I'm not sure what else to  
17 offer up as testimony, but I am available to  
18 answer questions.

19 HEARING OFFICER VALKOSKY: To what  
20 extent do you view the imposition of the  
21 conditions being debated between the parties,  
22 specifically conditions one through six, as  
23 necessary to achieve compliance with district  
24 rules?

25 MR. SWANEY: To be perfectly honest, I

1 have not read all the various proposed conditions.  
2 I do know that, since we are going to be issuing  
3 an authority to construct on this project, and so  
4 all compliance with our regulations will fall to  
5 us. We will enforce our Regulation 8 rules, as we  
6 would with any other construction activities,  
7 regardless of what the conditions turn out to be.

8 COMMISSIONER PERNELL: When you say  
9 you'll enforce your regulations, what does that  
10 mean? Is there penalties involved, you shut them  
11 down?

12 MR. SWANEY: If they are not in  
13 compliance with an applicable requirement, the  
14 first thing that we would do is issue a notice of  
15 violation. They would need to come back in to  
16 compliance. We would negotiate a settlement for  
17 that NOV. For sources that end up really not  
18 paying attention to us we can petition our hearing  
19 board for an order of abatement. That doesn't  
20 happen very often, though.

21 COMMISSIONER PERNELL: Has it ever  
22 happened?

23 MR. SWANEY: Yes. That was the case  
24 with a company that was creating a public nuisance  
25 due to odors. That they were not able to cease

1 the odors, basically.

2 COMMISSIONER PERNELL: So the board then  
3 gives the order to fine or something else -- once  
4 you issue a notice, and if they're still out of  
5 compliance, then what happens?

6 MR. SWANEY: Well, if we issue a notice  
7 of violation and they do not come back in to  
8 compliance, they do have an option of petitioning  
9 our hearing board for a variance from our rules.  
10 If that was granted there would be conditions on  
11 the length of the variance and what they would  
12 have to do.

13 The variance would only be granted if  
14 there was cause why they could not come back into  
15 compliance. Otherwise, if they continue out of  
16 compliance each day can be viewed as a separate  
17 violation. Typically for a construction activity  
18 of this sort, that's not an ongoing thing, I don't  
19 see us going towards an order of abatement, simply  
20 because of the time frames involved.

21 It's a lengthy proceeding to get to the  
22 order of abatement.

23 HEARING OFFICER VALKOSKY: When do you  
24 anticipate the district will issue its ATC?

25 MR. SWANEY: Assuming that the

1 preliminary decision goes out on Thursday, the  
2 newspaper notice probably would not happen until  
3 Monday, it would be at least 30 days after that  
4 day.

5 HEARING OFFICER VALKOSKY: And that 30  
6 days would be a comment period?

7 MR. SWANEY: A 30 day public comment  
8 period, as required by our rules.

9 HEARING OFFICER VALKOSKY: Is it your  
10 opinion that compliance with Regulation 8 would  
11 sufficiently, would constitute sufficient  
12 mitigation to reduce PM-10 impacts to a level  
13 considered less than significant?

14 MR. SWANEY: While that is the purpose  
15 of Regulation 8, to minimize the fugitive dust  
16 emissions, since we have not done a CEQA analysis  
17 on the construction impacts I don't know if I'm  
18 prepared to say that it fully satisfies CEQA  
19 mitigation.

20 HEARING OFFICER VALKOSKY: Okay. Did  
21 you hear the discussion earlier about certain at  
22 least hypothetical exemptions to Regulation 8?

23 MR. SWANEY: Yes.

24 HEARING OFFICER VALKOSKY: In your  
25 opinion, would any of that apply to the project,

1 any of the exemptions?

2 MR. SWANEY: I am not an expert in  
3 Regulation 8, that falls to our compliance  
4 division. I have a feeling that, because of the  
5 size of the project, they probably will not enjoin  
6 any of the exemptions, but I suppose it's  
7 possible.

8 HEARING OFFICER VALKOSKY: Possible but  
9 not probable, is that a fair way to look at it?

10 MR. SWANEY: That would be my statement,  
11 yes.

12 HEARING OFFICER VALKOSKY: Ms. Warren,  
13 do you have any questions for Mr. Swaney? Just  
14 real quick, while they're thinking, Mr. Swaney.  
15 Would imposition of any of the measures proposed  
16 by staff in conditions one through six be contrary  
17 to or frustrate compliance with any district  
18 rules?

19 MR. SWANEY: Based on my limited  
20 knowledge of those conditions, since I've only  
21 briefly glanced at them, I didn't see anything  
22 that immediately jumped out at me regarding that.

23 HEARING OFFICER VALKOSKY: Okay, thank  
24 you. Ms. Warren, do you have anything?

25 MS. WARREN: Yes, just one question.

1 And that would be, do you believe that Regulation  
2 8 is being designed to prevent nuisance, is not  
3 designed to protect the public health?

4 MR. SWANEY: No, it is designed to  
5 protect public health, as are all of the rules of  
6 the district.

7 COMMISSIONER BOYD: Yes, I've got a  
8 question. Back to the document that Mr. Sarvey  
9 submitted that was the basis of discussion. I  
10 interpreted the whole intent of that was to  
11 counter the staff's comment that SCONOX was not  
12 technologically feasible.

13 And I think he put this in as a possible  
14 indication that the district had found it as  
15 technologically feasible. When you respond to the  
16 questions that were just here earlier, would you  
17 indicate also in your submittal whether or not the  
18 district feels that SCONOX is technologically  
19 feasible for --

20 MR. SWANEY: I can address that right  
21 now, if you like.

22 COMMISSIONER BOYD: I would like.

23 MR. SWANEY: When we are doing a best  
24 available control technology evaluation, we know  
25 that SCONOX is a technology that's out there. We



1 have an option of whether or not we say it's  
2 technologically feasible, and then determine if  
3 it's cost-effective in any given situation.

4 Or we can make a finding that it's not  
5 technologically feasible. Instead of making that  
6 finding that it's not technologically feasible,  
7 which I think is a case that can be made -- and  
8 I'm not going to disagree with the staff on that  
9 -- what the district has done is say that it's  
10 technologically feasible, so that we're not in a  
11 position of saying that it can't be done.

12 But showing that it is not cost-  
13 effective for projects based on the cost involved  
14 in getting the reductions from SCONOX. And in  
15 numerous cases we have done just that. We've done  
16 the cost-effectiveness analysis. We've done that  
17 for this proceeding also, so that will be in our  
18 preliminary decision, and found SCONOX to not be  
19 cost-effective, and therefore not required.

20 Now, like I say, one more think about  
21 the SCONOX technology. While it is true that they  
22 have no ammonia emissions, you do have to do some  
23 onsite regeneration, which requires the generation  
24 of hydrogen gas. So there are some other  
25 potential environmental effects from it that seem

1 to never be brought up in these proceedings.

2 But I did want to mention that there are  
3 other things that have to be looked at when  
4 dealing with SCONOX.

5 COMMISSIONER BOYD: Of course we're  
6 looking for hydrogen these days. And one other  
7 comment I would make, based on the not so tongue-  
8 in-cheek comments I made earlier about whether Reg  
9 8 is or is not protective of the public health.  
10 And I'm glad that it was clarified a moment ago  
11 that Reg 8 is not just a nuisance regulation, it  
12 is intended to protect the public health.

13 This whole debate tonight is just an  
14 indication to me of a dilemma I think that the air  
15 quality community is going to have to wrestle with  
16 here pretty soon, as to, in dealing with power  
17 plant siting cases and what-have-you, because this  
18 is getting very laborious sitting through some of  
19 these hearings and having extreme disagreement  
20 over what does and doesn't protect the public  
21 health.

22 And I think we just need to take a  
23 message back to your district that if the valley  
24 is going to be the site of more power plants,  
25 sooner rather than later we need to wrestle with

1 these air quality issues and differences of  
2 opinion, and hopefully resolve them, and not have  
3 to have such protracted discussions as this.

4 But that's just kind of notice to  
5 everybody here that this issue has to be dealt  
6 with and doesn't really reflect on this particular  
7 hearing at the moment. It's something on the  
8 horizon that's beginning, or has been concerning  
9 me for quite some time.

10 But, you know, when we imply that you're  
11 not being protective with the public health, I  
12 would not take that too lightly if I was sitting  
13 in the audience. So there is a dilemma here.

14 HEARING OFFICER VALKOSKY: Mr.  
15 Westerfield -- I'm sorry, Ms. Warren?

16 MS. WARREN: No questions.

17 HEARING OFFICER VALKOSKY: Mr.  
18 Westerfield?

19 MR. WESTERFIELD: No questions.

20 HEARING OFFICER VALKOSKY: Mr. Sarvey?

21 MR. SARVEY: Yes, I just had one  
22 question. Mr. Swaney, in order for the applicant  
23 to qualify for an interpollutant offset ratio,  
24 does the Applicant have to demonstrate that  
25 there's no other PM-10 offsets available in order

1 to substitute SO2 for PM-10?

2 MR. SWANEY: No. Our district rules  
3 specifically allow interpollutant offsets.

4 MR. SARVEY: Thank you.

5 HEARING OFFICER VALKOSKY: Anything  
6 else?

7 COMMISSIONER BOYD: I would comment that  
8 we scheduled this hearing to start this afternoon  
9 and to run into evening to accommodate the public.  
10 And I think after 6:00 we lost audience, we didn't  
11 gain audience. I'm going to be hard pressed to  
12 try this again in the near future, and start  
13 earlier in the day, and so on and so forth.

14 So I appreciate the patience that  
15 everybody's had, and I hope everybody stays awake  
16 as they drive home tonight.

17 HEARING OFFICER VALKOSKY: Is there  
18 anything further on the topic of air quality? Ms.  
19 Kaefer, please come on up.

20 MS. KAEFER: I apologize for my  
21 neighbors that aren't here.

22 COMMISSIONER BOYD: I do believe it was  
23 your idea.

24 MS. KAEFER: I know. And I said if  
25 nobody shows up I'm going to look bad. And I said

1 "no, it's okay." I have, my number one issue --  
2 actually, Mr. Walters, I really like all of his  
3 ideas for the more stringent dust requirements.  
4 He's on my side I think.

5 I need to take exception to Mr.  
6 Rubinstein's clarification on the distance that  
7 the residents are not sensitive receptors, that a  
8 hospital or a school or whatever is. I'm a real  
9 sensitive receptor, extremely. And dust is  
10 probably the next issue, next to noise, because of  
11 my location.

12 And somebody asked me earlier -- and I'm  
13 PK on the chart -- but I don't know where it says  
14 that we're not sensitive receptors, but in the --  
15 let me find it here -- in the draft initial study,  
16 on page 11-3, under the city of Ripon municipal  
17 code, the bottom sentence there says "the project  
18 site is not adjacent to residential uses,  
19 therefore construction noise is only of concern in  
20 the city of Ripon."

21 Which is discernible -- actually this is  
22 a noise issue, but we go back to noise or we go  
23 back to this. We are certainly -- we may not be  
24 adjacent but we're still real close enough that we  
25 are absolutely affected by this.

1           And I want to say -- if you can see on  
2 the chart where the ballfield is -- we have two  
3 things that would happen when they have softball  
4 games. They take a tractor and they run little  
5 circles around, and those are really little areas  
6 in there.

7           And everybody in the neighborhood has to  
8 close all their doors and windows, and we have one  
9 neighbor who is asthmatic, and can't breathe just  
10 from that little bit of dust. And that's just a  
11 little bitty ballfield. And now we're talking  
12 about a great big space that I understand you're  
13 saying is a small space as compared to what the  
14 regs are.

15           But it's a really big space as there's  
16 construction going on for months, as I understand  
17 it, it's going to take this time frame, I'm going  
18 to get dust. I hope I'm not. But if I am is that  
19 something that I can address with air quality,  
20 because what I'm hearing here, and I'm seeing  
21 three alternatives, and I don't know that -- did  
22 we really pick one tonight?

23           I see all these lines drawn through, and  
24 I see and hear different things about which one  
25 we're going to use and parts of it, and nowhere is

1 the public involved in your estimations and what  
2 we're looking at for regulations. And I guess  
3 there's a couple of questions to each of you, I  
4 don't know.

5 MR. WALTERS: I'm trying to discern what  
6 the question was exactly, but I guess from staff's  
7 point of view we have one proposal, the Applicant  
8 has three. You know, we consider our one proposal  
9 really only different from theirs in two aspects.

10 One being what we consider to be a very  
11 important aspect, and we do think it is necessary  
12 not to make the change that they are requiring,  
13 specifically due to the local residents in the  
14 area.

15 MS. KAEFER: So you are going to take  
16 into consideration that we are residents, not  
17 just --

18 MR. WALTERS: Well, I think staff has.  
19 When we identified the maximum concentration at 20  
20 micrograms, that was not -- what we call a  
21 sensitive receptor -- as it was defined for that  
22 purpose later in the document. It was at the  
23 maximum residential receptor.

24 MR. RUBENSTEIN: Did you want me to jump  
25 in as well?

1 MS. KAEFER: Sure.

2 MR. RUBENSTEIN: A couple of things.

3 First of all, I certainly didn't mean to suggest  
4 that nearby neighbors, such as yourself, are not  
5 sensitive. The term sensitive receptor is just a  
6 legal term, and the discussion at the time was  
7 getting a little confused.

8 Second of all, I want to assure you  
9 that, no matter which alternative the Committee  
10 picks, the dust will be very efficiently  
11 controlled, and if you have any concerns you can  
12 contact either the Energy Commission staff  
13 compliance manager, or the air district.

14 Either one will be able to help you  
15 about any concerns about dust during construction.  
16 Any of those alternatives.

17 MS. KAEFER: How will we know who to  
18 contact and how? Are you going to have little  
19 forms out, because we already know the city is  
20 useless for giving us anything. So can we get  
21 them from you, or who would we get them from?

22 MS. WARREN: My response to your  
23 comments is in my final initial study I provided  
24 the phone number to Ila Lewis, who is the  
25 compliance project manager, and the phone number



1 for the district for complaints, the specific  
2 complaint number they have on their website. So  
3 either of those phone numbers will get you  
4 directly to who you need to talk to.

5 MS. KAEFER: And then lastly -- I know  
6 everybody wants to get out of here -- do I have to  
7 go back and sit down, or can I do, because it's  
8 kind of, it's back to the noise issue, but because  
9 of the paragraph that I just read --?

10 HEARING OFFICER VALKOSKY: Why don't you  
11 just stay right there. You don't have any  
12 comments on air quality, we'll close out air  
13 quality, and then we'll just take your general  
14 public comments.

15 Are there any more comments on air  
16 quality? Seeing none, we'll close the record on  
17 that topic and just call for general public  
18 comment. Ms. Kaefer?

19 MS. KAEFER: Back to that same  
20 paragraph, on the draft initial study, where it  
21 says "the project site is not adjacent to  
22 residential uses, therefore construction noise is  
23 only a concern in the city of Ripon for natural  
24 gas pipeline."

25 The noise, as we all know, is really a

1 big issue to us. And what this says then, on the  
2 errata, "local LORS do not set a limit on the  
3 magnitude of construction noise, but merely limit  
4 the hours of the day during which noisy  
5 construction work may appear."

6 So from seven to seven, as I read this,  
7 they can make any amount of noise they want to  
8 make, and we can't say a word, because that's what  
9 it says here.

10 HEARING OFFICER VALKOSKY: I think  
11 that's what that is saying, is, if that happens it  
12 complies with the local ordinance.

13 MS. KAEFER: Well, it says that there  
14 isn't a local ordinance with the magnitude of the  
15 noise.

16 HEARING OFFICER VALKOSKY: Right. The  
17 local ordinance controls only the time during  
18 which that noise happens.

19 MS. KAEFER: So do we have no one to say  
20 anything about the amount of noise coming from  
21 construction?

22 HEARING OFFICER VALKOSKY: I don't know  
23 the answer right now based on staff's proposed  
24 conditions.

25 COMMISSIONER PERNELL: If I might

1 suggest, there is typical construction noise that  
2 is common around building, whether it's a power  
3 plant or an apartment complex. So there's going  
4 to be some noise.

5 Normally, because of the health and  
6 safety of workers on construction sites, they try  
7 to limit the noise as well, and even have earplugs  
8 in some instances where you're driving piles.

9 But I wouldn't anticipate that there's  
10 going to be an extraordinary amount of  
11 construction noise that is not typical of the type  
12 of construction that's going to be going on.

13 One of the, I think what our Hearing  
14 Officer is saying, Mr. Valkosky, is that there are  
15 certain times a day that construction activity can  
16 take place.

17 For example, if you are downtown you  
18 can't start real early, or if you're adjacent to a  
19 neighborhood you can't start real early in the  
20 morning or go late at night where you're waking up  
21 people and causing them some discomfort in terms  
22 of their private time.

23 So there is a -- I wouldn't worry so  
24 much about how much construction noise there's  
25 going to be. I think limiting it to daylight

1 hours and regular time when people are either up  
2 gone to work or moving around is, or at least has  
3 been in the past, sufficient for, to address some  
4 of the concerns of the neighborhood.

5 So that one I wouldn't worry too much  
6 about. So with the dust and the compliance I  
7 think we have, you have a handle on in terms of  
8 who to call, and certainly I would recommend you  
9 do that if it gets to be a health problem.

10 MS. KAEFER: I remember -- and I don't  
11 know at what point it was, there was some  
12 discussion over the number of hours you're allowed  
13 for construction, and they had put a limitation  
14 and then you guys asked for something, and I never  
15 heard the final outcome. Are you allowed from  
16 seven to seven, is that right?

17 MR. RUBENSTEIN: Yes.

18 MS. KAEFER: So it's just following the  
19 LORS thing?

20 MR. RUBENSTEIN: Right.

21 COMMISSIONER PERNELL: And that's pretty  
22 typical.

23 MS. KAEFER: Okay. I have one more  
24 thing, and I have to find it. There was something  
25 you just changed from 50 to 100 -- who knows what

1 I was talking about?

2 HEARING OFFICER VALKOSKY: Horsepower.

3 MS. KAEFER: The horsepower on the  
4 motor, and --

5 COMMISSIONER BOYD: Nothing got changed.  
6 There was a couple of proposals that they're still  
7 debating.

8 MS. KAEFER: Okay, well on the little  
9 scratch from 50 to 100, does that make a noise  
10 difference?

11 MR. WALTERS: No. Separate issue.

12 MS. KAEFER: Okay, that's it. Thank  
13 you.

14 HEARING OFFICER VALKOSKY: Thank you.  
15 Any other comment from anyone present? Okay, the  
16 final issue, at least that I have, is the briefing  
17 period. We're going to try for an expedited  
18 transcript on this case, which would probably get  
19 us the hard copy in the middle of next week.

20 Assuming that it's available by the  
21 10th, what I would propose to do is have parties  
22 file briefs on the 26th. Does that create any  
23 problems for anybody?

24 MS. WARREN: We'll make it work.

25 HEARING OFFICER VALKOSKY: Mr.

1 Westerfield?

2 MR. WESTERFIELD: Yes, I think as far as  
3 we're concerned that's a little fast. We had  
4 originally called for 21 days, three weeks, and  
5 obviously that's a little over two weeks. So  
6 I--

7 HEARING OFFICER VALKOSKY: That's 16  
8 days. Okay, how about the end of the month. Ms.  
9 Warren?

10 MS. WARREN: That obviously would work  
11 with schedules on our end a little bit better.  
12 But we would make either work.

13 HEARING OFFICER VALKOSKY: Okay, but you  
14 would prefer the 30th? Okay. That gives us a  
15 little flexibility and availability to transcript  
16 too. Mr. Westerfield?

17 MR. WESTERFIELD: Well, I think, again,  
18 if the transcripts don't come out --

19 HEARING OFFICER VALKOSKY: I'm assuming  
20 the transcript is out on the 10th or 11th. It's  
21 one of the things -- that's the assumption.

22 MR. WESTERFIELD: I think we would like  
23 at least three weeks to prepare these briefs after  
24 the transcripts come out. That's our request.

25 HEARING OFFICER VALKOSKY: Mr. Sarvey,

1     you might as well weigh in on this too.

2                 MR. SARVEY: Well, I've got a 60 hour a  
3     week job, and TESLA coming up and a couple other  
4     things, so I'd like as long as possible. But I'll  
5     comply with whatever orders are issued by the  
6     Committee.

7                 HEARING OFFICER VALKOSKY: Okay. What  
8     I'm going to do, I think the Committee will  
9     reserve decision on that. We'll check tomorrow as  
10    to when the transcript is likely to be available.  
11    The Committee will then issue a briefing order.

12                COMMISSIONER BOYD: I want to make a  
13    couple of observations here. This is an atypical  
14    process, not a typical process, and I'm not quite  
15    sure what's appropriate and what's not  
16    appropriate.

17                This seems like an ordinary power plant  
18    siting case, except I know it's not, it's an  
19    application for an exemption. Therefore, there  
20    are differences. And knowing what the criteria is  
21    to grant that I'm a little troubled to hear, over  
22    a couple of things I've heard tonight, about  
23    enforceability, or who's going to enforce things.

24                Both with regard to noise, the visual,  
25    the landscaping discussion -- there's probably

1 others. There's an awful lot of consternation  
2 about what the city, upon whom some responsibility  
3 falls, is willing to do and is capable to do, and  
4 I'm worried about that, and I'm suggesting that  
5 people think about that a little bit.

6 And if the city of Ripon is interested  
7 in this facility, maybe it would behoove them to  
8 send a signal in some form, even a resolution or  
9 something, that they would enforce the  
10 responsibilities that will end up with them as a  
11 result of what's going on in this process.

12 Because without that, it leaves us with  
13 a dilemma, I think. Anyway, that's just a  
14 personal observation.

15 HEARING OFFICER VALKOSKY: Anything  
16 else?

17 COMMISSIONER BOYD: I have nothing else.

18 HEARING OFFICER VALKOSKY: With that,  
19 I've --

20 MS. WARREN: Mr. Valkosky, just before  
21 we close everything down, the evening has dragged  
22 on. I must confess that I have somewhat lost  
23 assurance in my own mind that I have moved into  
24 evidence all of our exhibits as we've gone along,  
25 and would like to close the loop on that issue, if



1     that's acceptable.

2             My understanding is that, as we've gone  
3     through, we've covered exhibits one through 21,  
4     exhibit 25 and exhibits 27 through 36. And if  
5     we've missed any of those I would like to move  
6     them in. They've all been referenced in the  
7     testimony that has been given here today.

8             HEARING OFFICER VALKOSKY: Is there any  
9     objection Mr. Westerfield?

10            MR. WESTERFIELD: No objection.

11            HEARING OFFICER VALKOSKY: Mr. Sarvey?

12            MR. SARVEY: No objection.

13            HEARING OFFICER VALKOSKY: The blanket  
14     motion is granted.

15            MS. WARREN: Thank you. And then, I've  
16     been asked to please remind everybody to turn your  
17     badges in. If you'd like to give them to Mr. Hill  
18     there, or just set them on the table, we will take  
19     care of them from there for you. Thank you all.

20            HEARING OFFICER VALKOSKY: Thank you.

21     And with --

22            COMMISSIONER BOYD: And those of us who  
23     got in here without a badge, can we get out?

24            HEARING OFFICER VALKOSKY: Thank you for  
25     your attendance.

1 (Thereupon, at 11:26 p.m., the hearing adjourned.)

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## CERTIFICATE OF REPORTER

I, JAMES RAMOS, an Electronic Reporter,  
do hereby certify that I am a disinterested person  
herein; that I recorded the foregoing California  
Energy Commission Public Hearing; that it was  
thereafter transcribed into typewriting.

I further certify that I am not of  
counsel or attorney for any of the parties to said  
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outcome of said public hearing.

IN WITNESS WHEREOF, I have hereunto set  
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